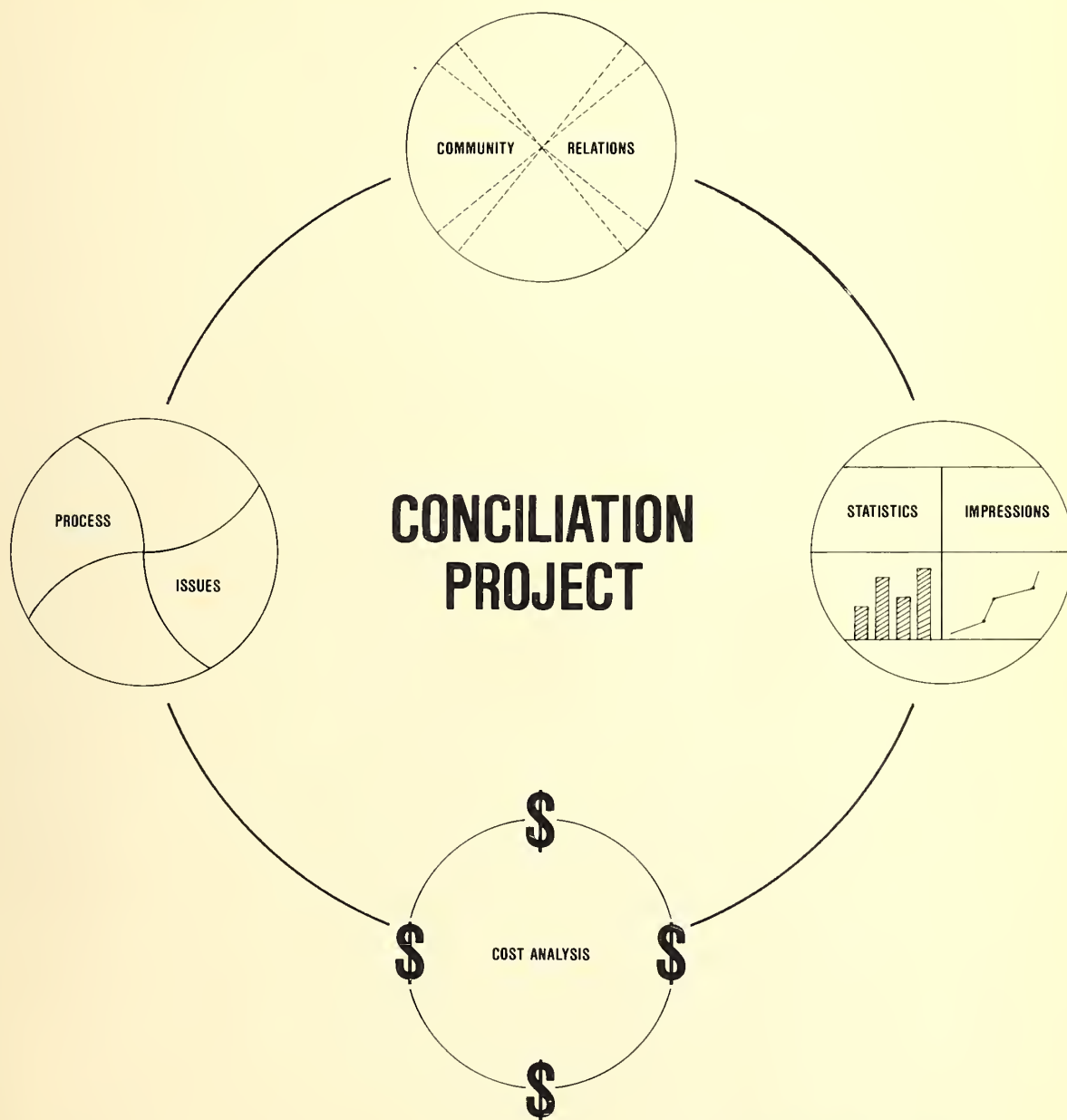




00006679



Ministry of the Attorney General



KF
505.5
O571
1980

FINAL REPORT of the CONCILIATION PROJECT Provincial Court (Family Division) Toronto

August 1, 1980

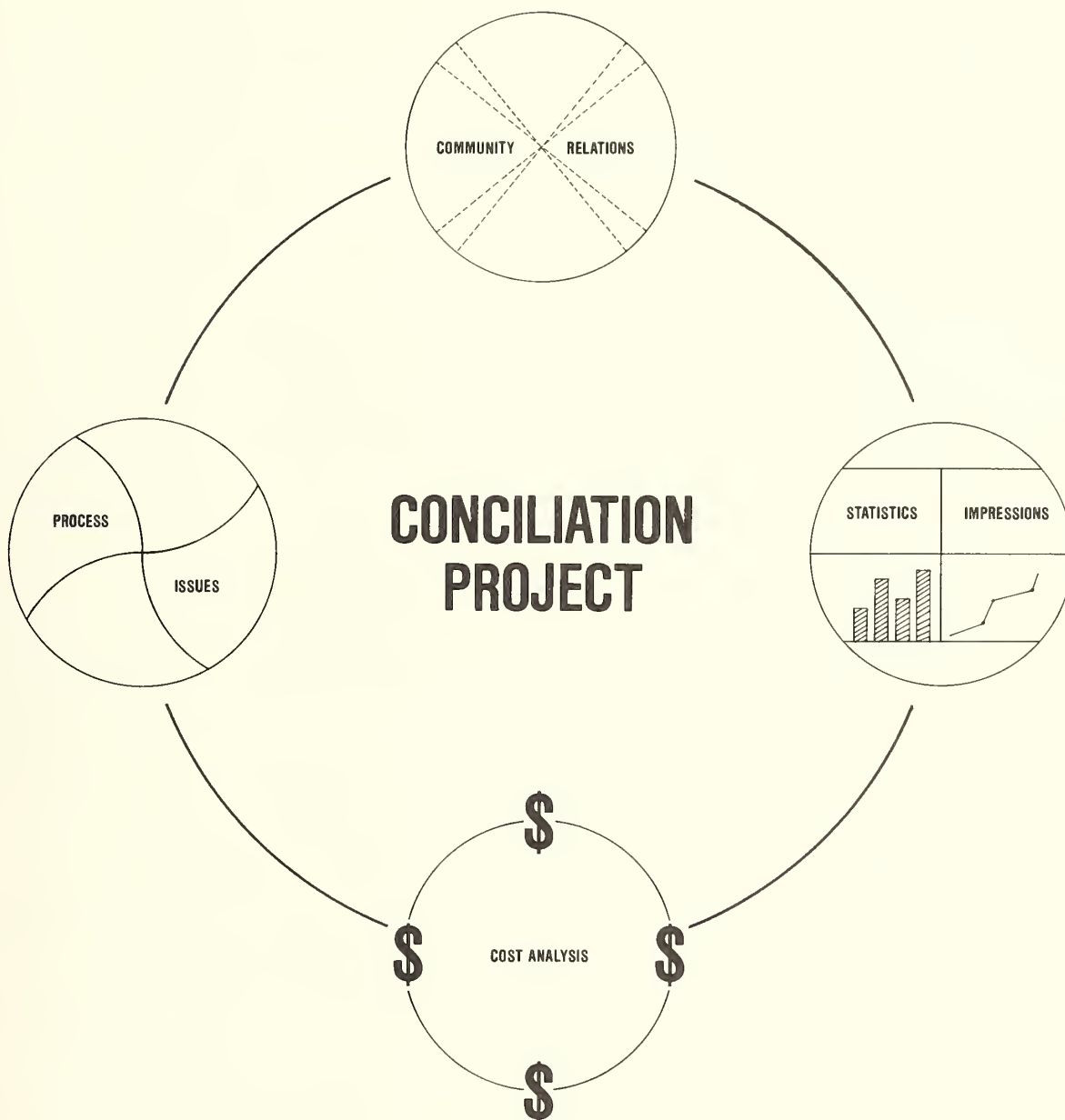
KF 505.5 O571 1980
Ontario. Provincial Court.
Final report of the
Conciliation Project, Provin

KF 505.5 O571 1980
Ontario. Provincial Court.
Final report of the
Conciliation Project, Provin

MINISTRY OF THE
ATTORNEY GENERAL
LAW LIBRARY



Ministry of the Attorney General



FINAL REPORT of the CONCILIATION PROJECT Provincial Court (Family Division) Toronto

August 1, 1980

BOARD OF DIRECTORS

CHAIRMAN

Dr. D. Mendes da Costa, Q.C.
Chairman, Ontario Law Reform Commission

VICE-CHAIRMAN

Mrs. Ruth Parry
Director, Family Court Clinic, Clarke Institute of Psychiatry

ACCOUNTANT

Mr. Harry Nixon
Smith, Nixon & Co.

MEMBERS

His Honour Chief Judge H. T. G. Andrews
Provincial Court (Family Division)

Dr. Reuben Baetz
Minister of Energy

His Honour Senior Judge L. A. Beaulieu
Provincial Court (Family Division)

Mrs. Beth Clements
Formerly Children's Aid Society, Metropolitan Toronto
Master Alex J. Davidson, Q.C.
Master, Supreme Court of Ontario

Master W. R. Donkin, Q.C.
Master, Supreme Court of Ontario
(Formerly, York County Area Director, Legal Aid Plan of Ontario)

Mr. Barry Falls
Family Service Association

Mr. John R. Jennings, Q.C.
Kingsmill Jennings

Mr. Robert Klassen
Barrister and Solicitor

Mr. E. Larman
Jewish Family & Child Service of Metro Toronto

His Honour Judge D. R. Main
Provincial Court (Family Division)

The Honourable Donald R. Morand
Ombudsman for Ontario
(Formerly, Justice of the Supreme Court of Ontario)

Mrs. Frances Pendrith
Ministry of Community & Social Services

Mr. Lloyd W. Perry, Q.C.
Official Guardian

Ms. Janet Rowney
Ministry of Community & Social Services

Mr. Allan Sherlock
Catholic Children's Aid Society of Metro Toronto

Madame Commissioner Speigel
The Supreme Court of Ontario

Staff Sgt. William Stanton
Metro Toronto Police

Ms. Marlene Swirsky
Family Court Clinic, Clarke Institute of Psychiatry

Mrs. Karen Weiler
Ministry of Attorney General

His Honour Judge E. F. Wren
Judicial District of York

EX OFFICIO MEMBERS

Mr. T. Michael Quiggin
Director, Conciliation Project, Provincial Court (Family Division)

Dr. H. Irving
Professor, Faculty of Social Work, University of Toronto
Research Consultant, Conciliation Project

Mrs. J. Kelly
Supervisor, Intake Dept., Provincial Court (Family Division)

Mr. M. Baker
(Formerly Director, Court Services, Provincial Court (Family Division))

CONCILIATION PROJECT STAFF

Mr. T. Michael Quiggin
Director

Ms. Patricia Cheong
Administrative Assistant

Mr. Sydney Mahadeo
Statistics and Records

Mr. S. William Davidovitz
Conciliator

Mrs. Helen Goudge
Conciliator

Mrs. Joan Kelly
Conciliator

Mrs. Ann Poulter
Conciliator

Ms. Patti Tummon
Conciliator



Ministry of the Attorney General

Judicial District
of York
Provincial Court
(Family Division)
Conciliation Project

August 1, 1980

This Report, as indeed the Conciliation Project itself, has depended upon the co-operative efforts of many committed persons, both volunteers and staff.

As Chairman of the Board of Directors, I have had the opportunity to observe in detail all facets of this complex Project. This has been a personal pleasure for me, both in terms of the people with whom I have worked and in the acquisition of the knowledge that has evolved from this work.

It is my hope, as I am sure it is of all those who have been involved with the Project, that the information we are sharing in this Report will be of value to others who seek to serve people embroiled in domestic disputes.

Derek Mendes da Costa

Derek Mendes da Costa, Q.C.

ACKNOWLEDGEMENTS

It is recognized that the Conciliation Project, Provincial Court (Family Division) involved many committed people working cooperatively; the members of the Board of Directors, Project Service and Research Staff, Judges, lawyers, Intake Staff, Court Administration and other Court Staff, Representatives of the Welfare Grants Directorate of Health and Welfare Canada and the Ministry of the Attorney General of the Province of Ontario, the two funding bodies, have given generously of their time.

The Honourable R. Roy McMurtry, Q.C., the Attorney General for the Province of Ontario, has taken a strong personal interest in the Conciliation Project. Mr. McMurtry was the key-note speaker at the Conciliation Conference held in October 1978, and we acknowledge with gratitude this and the many other ways whereby he demonstrated his continuous support and encouragement.

Mr. Robert Hart, Regional Consultant of the Welfare Grants Directorate of Health and Welfare Canada has given generously of his time to assist the Board and staff in policy direction, service orientation and research.

His Honour Chief Judge Andrews, Provincial Court (Family Division) has been a moving influence from the outset. It was through his interest and under his leadership that the Project was initially conceived.

Dr. Derek Mendes da Costa, Q.C., Chairman of the Ontario Law Reform Commission and Chairman of the Conciliation Project Board of Directors, has skillfully and sensitively guided the Conciliation Project through its three year demonstration term.

The Judges of the Jarvis Street Court and Scarborough Court have provided warm cooperation and support for the Conciliation Service.

This report was prepared by the Project staff with the assistance of an Editorial Board consisting of:

J.H. Nixon, F.C.A. (Chairman), Smith, Nixon & Co.

W.R. Donkin, Q.C., Master, Supreme Court of Ontario

His Honour Judge D.R. Main, Provincial Court (Family Division)

Ruth S. Parry, M.S.W., Director, Family Court Clinic, Clarke
Institute of Psychiatry

T.M. Quiggin, M.A., Director, Conciliation Project

The conclusions and findings of this report do not represent the views of the two funding bodies, Welfare Grants Directorate of Health and Welfare Canada and Ministry of Attorney General of the Province of Ontario, but are those of the authors of the report.

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	1-2
PREFACE	3-7
Introduction	3
Development of the Project	5
The Process after Referral	6
STATISTICS AND IMPRESSIONS	8-23
Purpose and Sources	9
Reasons for Referral	10
Time and Outcome Observations	14
Referral Sources	17
Comparison of Half-Time and Full-Time Conciliation Staff	20
Use of Interview Time	22
Students	23
PROCESS AND ISSUES	24-50
The Conciliation Process	25
The Legal Context	25
The Emotional Context	26
Procedures and Techniques of Conciliation	27
Custody	34
Joint Custody	36
Access	37
Interviews with Children	39
Financial and Property Matters	42
Threatening and Assault	42
Collaboration with Lawyers	44
Training for Conciliation Counselling	47
Administrative Systems	50

COST ANALYSIS	51-67
Purpose and Sources	52
A. Conciliation Project	54
1) The Conciliation Model	54
2) Ratios Used in The Cost Analysis	54
3) Total Cost for Each Conciliator Productive Hour	56
4) Total Cost for Each Conciliator	57
5) Cost for Each Case by Type of Referral	57
6) Monthly Case Load Carried by Each Conciliator	58
7) Number of Referrals Each Month	59
8) Staff Requirements Based on Case Load, Levels of Efficiency and Combinations of Referral Sources	59
9) Ratio Family Court Case Load to Conciliation Referrals	60
B. Provincial Court (Family Division), 311 Jarvis Street	61
1) Analysis of Cases by Cost Centre	61
2) Summary	66
COMMUNITY RELATIONS	68-72
General Contact	69
Board Seminars	70
Conciliation Conference	71
SUMMARY	73-79
Statistics and Impressions	74
Process and Issues	75
Cost Analysis	77
Community Relations	78
Conclusion	79
APPENDIX	80-81
Standing Committees Established by Board of Directors of The Project	80-81

PREFACE

INTRODUCTION

The Conciliation Project, Provincial Court (Family Division) in Metropolitan Toronto was a three year demonstration Project funded jointly by the National Grants Directorate of Health and Welfare Canada and the Ministry of The Attorney General of the Province of Ontario. Its objectives, as set out in the 1976 Project Proposal,¹ were "to develop and provide an alternative to the present adversary Family Court system which will, first, offer a dispute resolution service to families in a more amicable way, and, secondly, reduce the Court time taken to deal with non-legal problems."

After a preliminary study involving discussions with the many professionals who were involved with domestic disputes, the Project was funded to begin during the 1976-1977 fiscal year. His Honour Chief Judge Andrews was the pro-tem chairman of the Project Board during the planning stages. Dr. Derek Mendes da Costa, Q.C. was appointed chairman of the Project Board once the Project became operative in the Fall of 1976.

The Board of Directors met on a monthly basis during the three years of the demonstration. Much of the policy planning, especially in the first year of the Project, was delegated to standing and ad hoc committees of the Board.

The Project offices were located in the Provincial Court (Family Division) 311 Jarvis Street, Toronto.

The staff team was brought together beginning September 1st, 1976. All conciliators were professional social workers. The first clients were seen November 1st. 1976.

¹This proposal and other service and research reports of this Project referred to hereafter may be obtained from His Honour Senior Judge L.A. Beaulieu, Provincial Court (Family Division), 311 Jarvis Street, Toronto.

This is the third and final Report, the first and second service Reports having been presented during the operation of the Project. The second Report of June 1st, 1978 contains a comprehensive review of the organization and planning processes and outlines the interpretive work undertaken with the Courts, lawyers and social agencies in preparation for receiving referrals to the Conciliation Service. After about eighteen months the Conciliation Service was receiving referrals from all levels of the Court system, from lawyers and social agencies and from the general public.

This final Report includes a statistical analysis of the cases with conciliators' impressions, a presentation of the conciliation process and issues, a cost analysis, and an account of community relations activities. The content reflects a particular approach to conciliation - an approach which has general application value but one which also has unique qualities particular to a large urban centre.

The design of the Project included a separate research component which forms the basis of a separate report.

The three years of the Conciliation Project have been challenging, exciting and interesting ones for both the Board and Staff. It is hoped that this work will be of benefit in providing better and more humane methods of serving people embroiled in domestic disputes.

The terms used in conciliation work at the present time appear to be used by different people in different ways. In this Report we have described the staff as "conciliators". Most people seen in the Project were involved in cases which either had reached the Court or were about to do so and reconciliation, as opposed to conciliation, was no longer feasible. While, in fact, much of the work involved counselling within a therapeutic framework, the term conciliator seems more appropriate than counsellor or therapist in this context.

Similarly, the language applied to the parties recognizes that in this context reconciliation was possible in relatively few cases. Therefore, the terms "parent", "mother", "father", "estranged spouse", "client" and "party" are used generally. The terms "family", "husband", "wife", "couple", "partner", and "spouse", are used only to refer to intact families.

DEVELOPMENT OF THE PROJECT

Conciliators began seeing clients on November 1st, 1976. No new clients were seen after July 31st, 1979. During this period, November 1st, 1976, to July 31st, 1979, 1,173 files were opened.

For the first several months of the Project clients were chosen from the Intake stream of the Family Court. The selection was made on a quasi-random basis. This selection procedure was used to fulfill the requirements of Stage One of the research component of the Project. With this method, more than two-thirds of the cases involved contact with only one party to the dispute. As a result, during this period when cases were selected at random, conciliators spent most of their time providing traditional intake service and not the form of conciliation which became typical later in the Project.

From April 1st, 1977, the random selection process was phased out and the Project began receiving referrals for conciliation from the Judges of the Jarvis Street Family Court. All referrals required the initiation by the judge on consent of all parties. By January 1st, 1978, the referral base had been extended to include Judges of the Suburban Family Courts, the County Court and the Supreme Court, Commissioners and Masters of the Supreme Court, lawyers, social agencies and the general public. Even though referrals were accepted from this broad base of sources, over seventy-five

percent came from judges and lawyers, a significant number of which involved Supreme Court matters. The requirement that all parties consent to conciliation remained constant.

THE PROCESS AFTER REFERRAL

When a matter was before the Court, an adjournment of one month was usually granted for the purpose of conciliation and approximately fifty percent of cases were completed in this period of time. The time period for conciliation has varied widely among other conciliation services in North America. For both theoretical and practical reasons in this Project an administrative decision was made to include brief intervention as part of the conciliation process, allowing for an average of 6-7 interview hours per case.

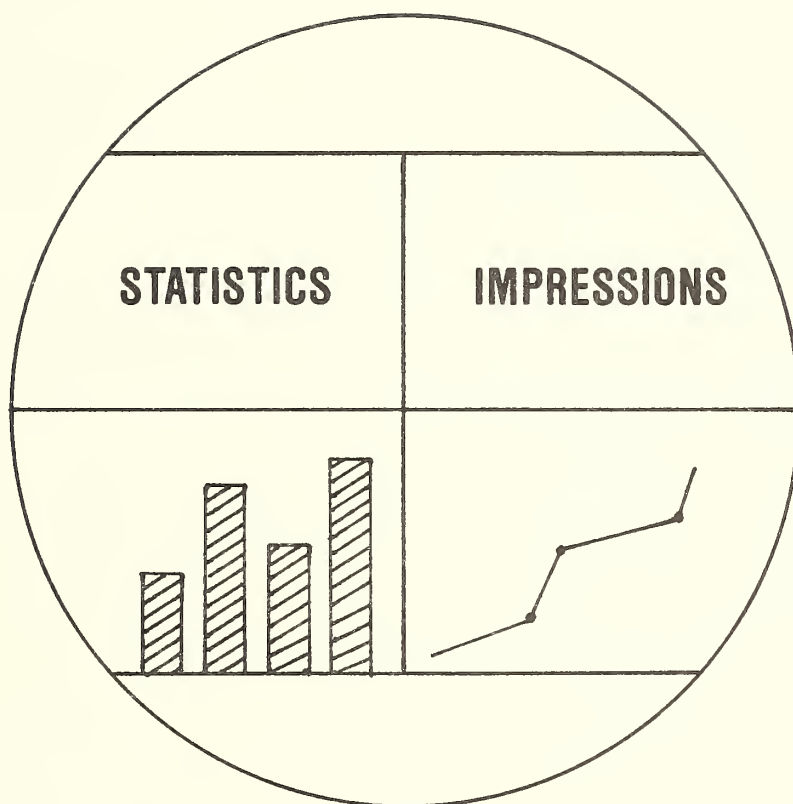
When a referral was made from the Jarvis Street Family Court, the parties were taken to the Conciliation Office by the Court Attendant where non-professional staff interviewed the parties and completed the conciliation intake form. The parties were then told that they would be contacted by their conciliator within a few days to arrange the first appointments. Referrals from all other sources were usually made by phone and were either taken directly by a specific conciliator or by non-professional staff, depending on the wishes of the person making the referral. Those cases not referred to a specific conciliator were distributed to conciliators at the weekly staff meeting. Contact was made with the parties within seven to ten days of the referral to arrange appointments. The primary requirement for referrals was the consent of all parties. In some cases, especially those referred from the Intake Service of the Jarvis Street Family Court, the conciliator would take the initiative in contacting the other disputant to explore the feasibility of conciliation.

The conciliation process itself involved a series of approximately four to six interviews. The purpose was to help clients develop their own solution to the legal dispute. The process included interviews with both parties to the dispute, individually and together. Where appropriate, conciliators saw the children, new partners, relatives and any other person important to the parties.

The resolution of the dispute was attempted by professional social workers using a combination of approaches including:

- negotiating with the parties the various issues in dispute;
- exploring the emotional components underlying the dispute; and,
- examining and distinguishing between the needs of the parents and their children.

The outcome of this process was forwarded in the form of a Conciliation Report to the clients, their lawyers and the Court. Based on the importance and understanding of confidentiality to the clients, these reports included only what was agreed upon and what was not agreed upon - no assessment data was presented. Moreover, should the matter proceed in court, conciliators were not expected to appear as witnesses. During the three year course of the demonstration no conciliator was subpoenaed.



STATISTICS AND IMPRESSIONS

PURPOSE AND SOURCES

Throughout the life of the Conciliation Project statistics were kept on a number of variables including the following: reason for referral, source of referral, conciliation outcome, and number and kind of interviews. This section of the Report presents some of the statistical findings and the conciliators' impressions of the conciliation process.

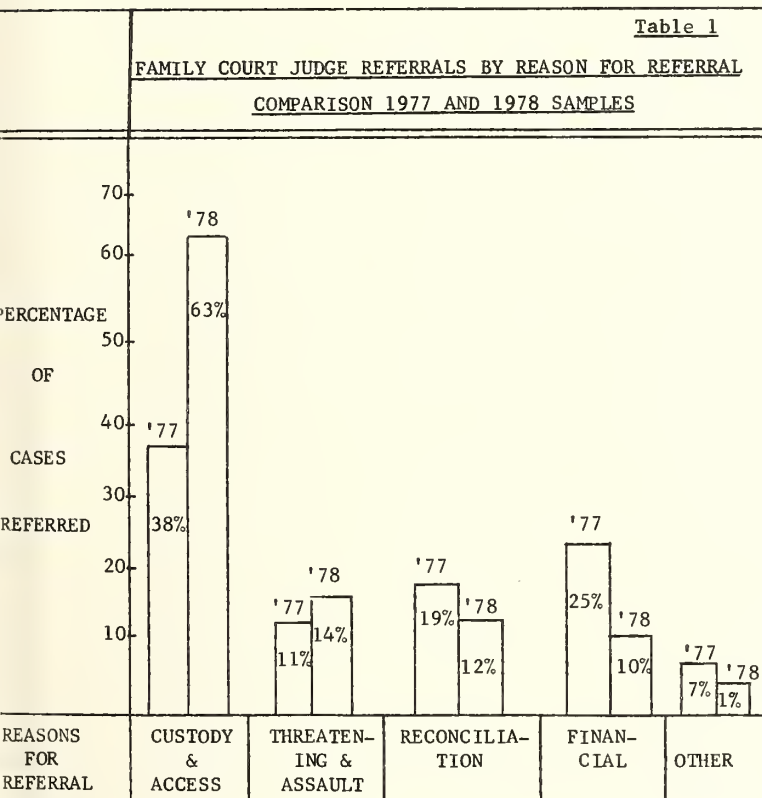
The data presented on the graphs is based on statistics collected during the following three periods:

- 1) April 1977 through October 1977, (the first 100 cases all from Family Court judges, referred to hereafter as "1977 sample").
- 2) September 1978 through January 1979, (the 96 cases terminated during this period of time which were referred by Family Court Judges and Intake Service, Lawyers, Commissioner of Supreme Court, Agencies and the General Public, referred to hereafter as "1978 sample").
- 3) January 1979 through April 1979, (161 cases from the same sources as in (2) above, referred to hereafter as "1979 sample").

It is important to note that the experience of the Conciliation Project was in a large urban centre. One of the key requirements in such a context is to avoid duplication of services. Therefore care has been taken to note the types of cases that might be as easily or better served by an existing agency. The conciliator's task in these cases was seen as facilitating the clients' access to an existing resource, and there was discussion with referral sources to determine the types of cases which were most appropriate for conciliation.

In reviewing the caseload of the Conciliation Project in terms of "reason for referral" the isolation of specific reasons might seem problematic because many cases involved a mix of issues. Nevertheless, in reviewing the cases in the 1977 and 1978 samples, it is possible to distinguish the primary reason for referral since it was identified in most cases by the referral source.

REASONS FOR REFERRAL

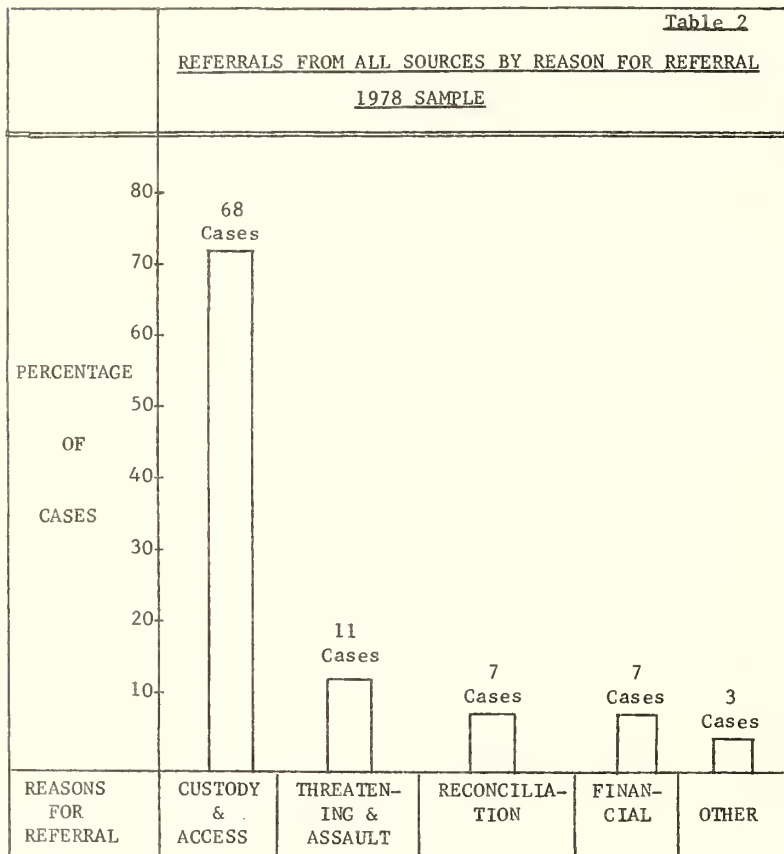


Of the first hundred cases referred by Family Court judges (1977 Sample), 38% were referred because of a Custody and Access dispute, 11% for Assault and Threatening, 19% for Reconciliation, 25% for Financial matters and 7% for Other issues (this 7% comprised cases where judges listed no reason for referral).

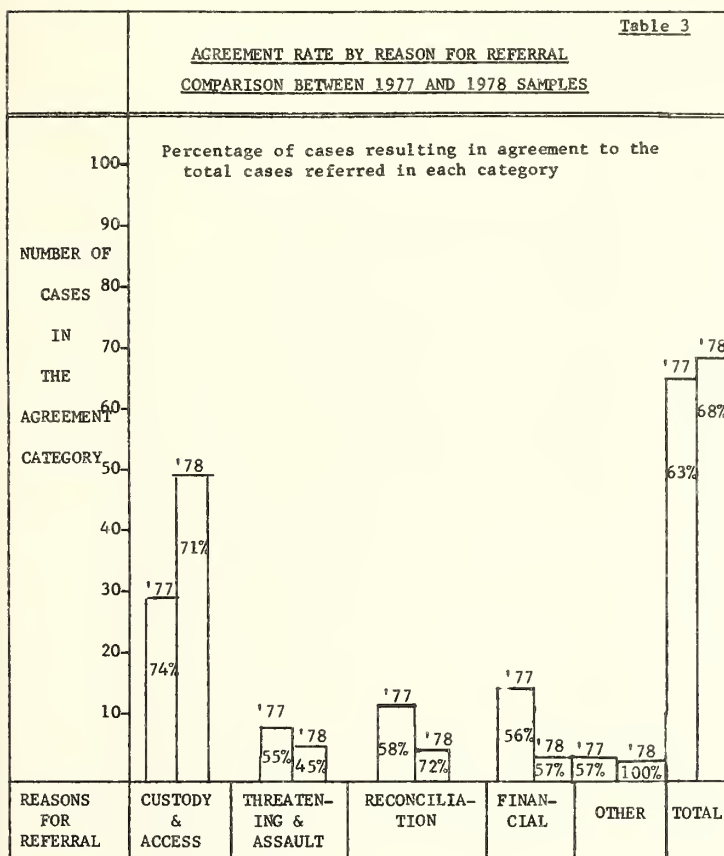
In the 1978 Sample, Family Court referrals were distributed in the following way - 63% for Custody

and Access, 14% for Assault and Threatening, 12% for Reconciliation, 10% for Financial and 1% Other (this 1% comprised cases where the issue was a Child Welfare or Juvenile dispute, as opposed to a domestic dispute).

There were perhaps several reasons for the differences between these two samples, differences that included the following: feed back from conciliators to judges, the judges' experience with referrals to conciliation, and the changes introduced by the Family Law Reform Act (proclaimed March 31, 1978) conferring upon Family Court judges broader jurisdiction, especially in regard to Custody disputes.



1978 sample includes referrals from all sources as well as the Family Court. When all sources of referral are taken into account, Custody and Access maintained its position as the predominant dispute for which cases were referred to conciliation.



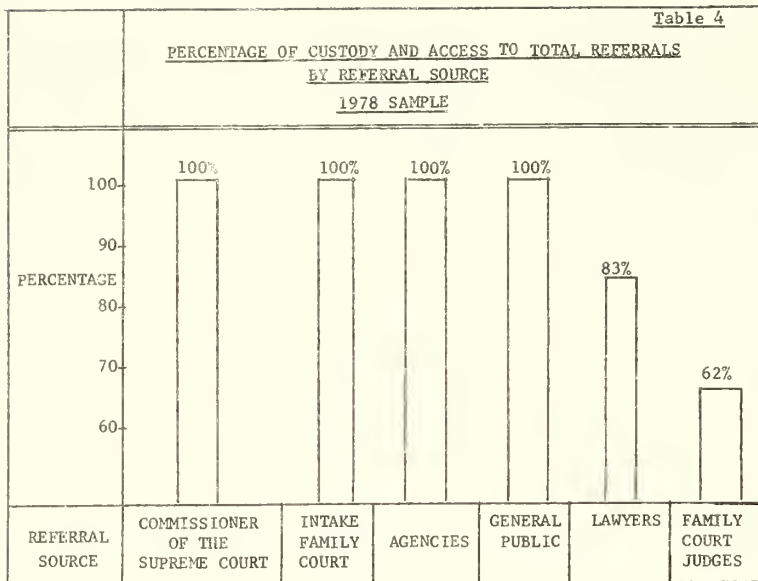
It is clear that Custody and Access was both the major reason for referral as well as being the issue with the largest agreement rate, excluding "Reconciliation" and "Other". (Reconciliation will be discussed later on page 13 and the number of cases in the "Other" category is too small to interpret).

It is interesting to note that the Outcome results by Reason for Referral are reasonably similar in both the 1977 and 1978 samples (Table 3).

Of the cases referred agreement were achieved as follows:

- Custody and Access - 74% achieved agreements in 1977, whereas in 1978 71% did so;
- Threatening and Assault - 55% in 1977, 45% in 1978 (in 1978 difference of one case);
- Reconciliation - 58% in 1977, 72% in 1978 (in 1978 significantly fewer cases were referred in this category - 19 in 1977 and 8 in 1978 possibly indicating a more sensitive and discriminating use of the service resulting both in fewer referrals and better results);
- Financial matters - 56% in 1977, 57% in 1978; and
- "Other" issues - 57% in 1977, 100% in 1978.

The "Other" issues category cannot be appropriately compared because in 1977 it comprised cases in which the judge did not indicate a reason for referral, whereas in 1978 it comprised cases which could not be considered domestic disputes; that is, those under the Child Welfare Act or the Juvenile Delinquency Act.



Custody and Access, given the number of referrals and the Outcome rate, evolved into being the primary focus of the conciliators during the second and third years of the three year demonstration period. It is to be noted that this occurred not only because of the nature of a Custody and Access dispute and the change in the legislation, but also because of the quality and character of the other types of disputes.

For example, from the outset of the Project reconciliation was a possibility in relatively few cases. Some cases did involve two partners who both wished to consider reconciliation and to use conciliation to work towards this goal. More often, however, one party continued to cling desperately to a hope for reconciliation, while the other party made clear his/her determination to separate. In such situations, repeated disappointments, with consequent bitterness and hostility, were felt by the rejected spouse. Conversely, the rejecting spouse, through guilt and anger, may have given mixed messages and false hope. The conciliator's role was to assist the parties to assess the reality of reconciliation and thereafter to help both parties and, where appropriate, the children, to accept and deal with their feelings.

It was the view of the Project staff that where both parties were initially interested in the possibility of reconciliation, in an urban area with a range

of family support services, referral to such a service might be a more appropriate plan for the family than use of a court-related conciliation service.

Similarly, financial issues did not appear to be appropriate for referral. From the experience of the conciliators a businesslike and pragmatic approach to these issues, such as might be offered by a lawyer or an accountant, was more effective than the involvement of a conciliator whose expertise lies in dealing with underlying conflicts.

However, in the Project it was frequently found that disputes were identified as financial that were in fact not financial issues at all. They were issues related to such matters as difficulty in accepting the separation, anger at the estranged spouse, or access/custody difficulties. The conciliators felt that an appropriate role for conciliation was to assist the parties in separating the financial from the non-financial concerns.

TIME AND OUTCOME OBSERVATIONS

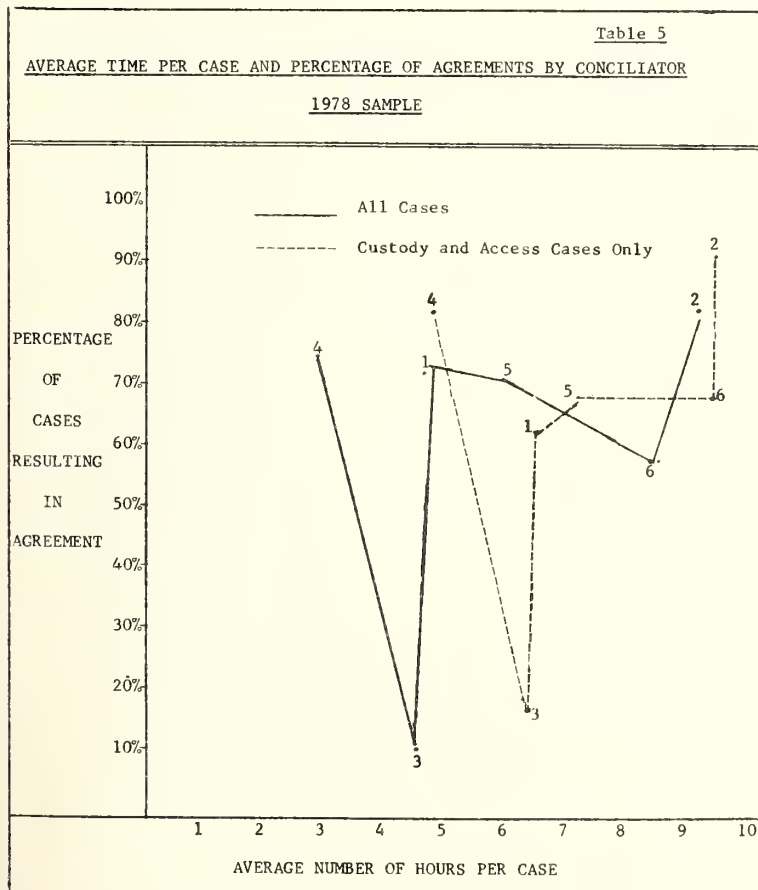


Table 5 presents agreement and time data by conciliator for the total 272 cases seen by conciliators between September 1978 through January 1979. Custody and Access dispute results are analysed separately due to their predominance within the total case load.

There were obvious difference between conciliators in regard to time and agreement rates. These differences appeared to be related, in part at least, to the following factors: the method of case assignment, the individual conciliator's expertise and interest in certain types of cases, and the differences in conciliators' styles particularly in their degree of assertiveness and directive approach. These factors will be discussed separately.

1) Method of Case Assignment

Some conciliators received many of their cases on a direct referral from the referral source. Such direct referrals appeared to result in a higher agreement rate.

2) Conciliator Expertise and Interest

Within such a small staff group, all Project staff quickly became aware of the particular interests and areas of expertise of one another. These perceptions led staff members to encourage their colleagues to undertake certain kinds of cases on the basis that the likelihood of reaching agreement might thereby be increased.

3) Conciliator Characteristics

The Project staff, seconded to the Project from the established Intake Service of the Court, had considerable experience with the wide range of cases dealt with at Intake. The seconded staff had a higher agreement rate on all cases than they did on Custody and Access cases alone. One might hypothesize that the seconded staff, through their previous work with the Intake Service, had more experience with financial cases and with assault and threatening cases than did the other Project staff. Cases involving custody disputes were new to both seconded and other Project staff, because this dispute area did not come within the jurisdiction of the Family Court until March 31, 1978.

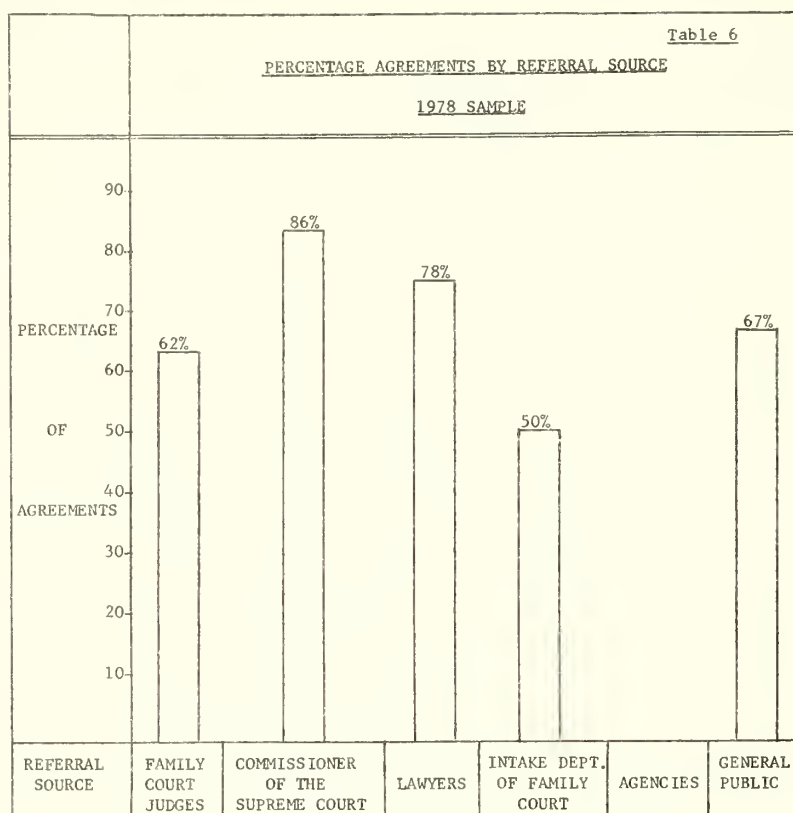
Differences in clinical or psychiatric experience did not appear to be related to the agreement rates. The conciliators having the lowest and highest agreements rates had worked within mental health settings for several years prior to joining the Project.

The conciliator with the highest agreement rate appeared to be particularly directive and assertive in style, and to undertake more direct work with lawyers and extended family members, children and new partners than did other Project staff. The conciliator with the lowest agreement rate seemed to be the least assertive and directive of all conciliators in the Project, perceiving agreement as having secondary value to the need for resolution of the clients' personal stresses.

Given the paucity of data available from so few staff members, the hypotheses raised in regard to the relationship between conciliator effectiveness (agreement rates) and conciliator characteristics are clearly impressionistic. However, the impressions are noted with a view to future research.

It would appear from the experience of this particular Project that a conciliator, with education and training at the Master's level in social work and several years experience working with families, requires the further ability to focus on the issues in a dispute as distinct from personal or inter-personal issues, and in a directive and assertive style.

REFERRAL SOURCES



The highest agreement rate² occurred in cases referred from the Supreme Court (86%). All the referrals in this category were from one Commissioner to the same conciliator. All clients had lawyers.

The second highest agreement rate occurred in cases referred from lawyers (78%). A high percentage of these referrals involved Supreme Court matters. Several different lawyers and

conciliators were involved. Referrals frequently were made by lawyers to specific conciliators, reflecting the good working relationship that evolved between the lawyer and the conciliator.

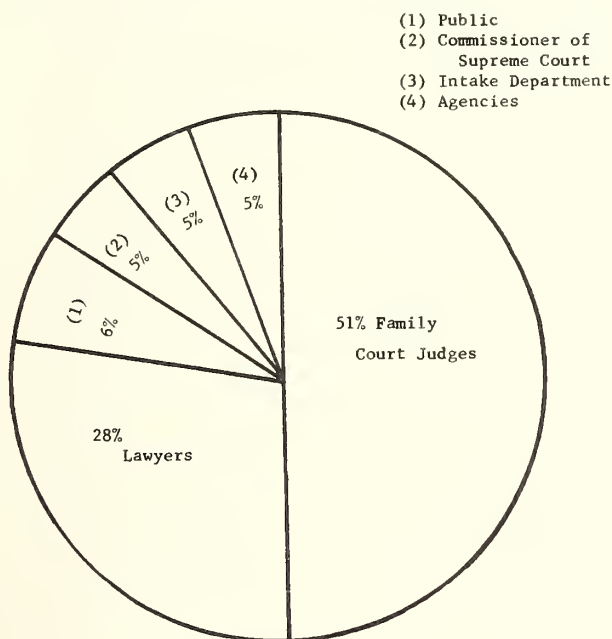
Family Court judges constituted the referral source with the largest number of referrals. The agreement rate in this category was 62%. This was lower than the rates discussed above. There were perhaps several reasons for this, namely: the volume of referrals itself increased the chance of disagreement; the reasons for referral included disputes that had relatively less chance of achieving agreement than those referred either from the Supreme Court or from lawyers (almost all of the cases referred by judges and officers of the Supreme Court and by lawyers were

²This included both partial and full agreements of issues in dispute. Data regarding partial v.s. full agreements was collected only in the 1977 sample. Findings from that sample indicated that there was full agreement in approximately 89% of the cases.

Custody and Access disputes); lawyers were not always involved, and all referrals from this source were processed through the central intake of the service, whereas many referrals from other sources were handled on a person to person basis between conciliator and the referral source.

It was clear that where there was co-operation between conciliators and lawyers, perhaps involving person to person referral, and where there was support for conciliation from the presiding judge, there was a much better chance for conciliation to result in agreement than when such factors were absent.

Table 7
PERCENTAGE OF AVERAGE NUMBER OF REFERRALS PER MONTH
BY SOURCE OF REFERRAL
1979 SAMPLE



The largest source of referral was the Family Court. 51% were referred at the suggestion of Family Court judges and a further 5% from the Intake Department of the Jarvis Street Family Court. The second largest source of referrals was lawyers at 28%. Many of the cases from lawyers involved Supreme Court matters as indicated in Table 8.

During the period studied thirty-two lawyers made referrals. Twenty-five lawyers made one referral, and four made two referrals. Of the remaining three lawyers, one made three referrals, one made four referrals and one made five referrals.

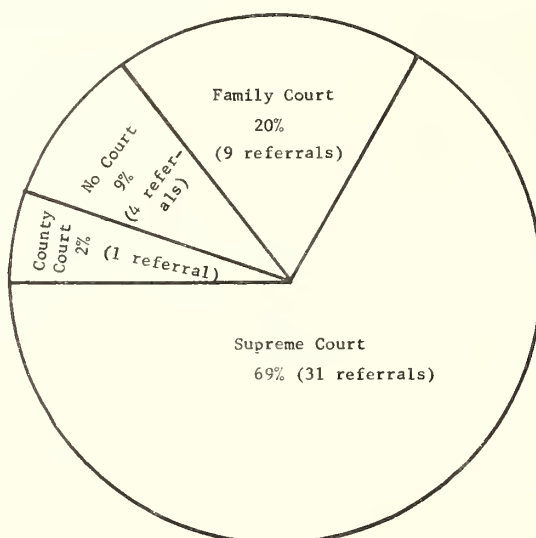
In terms of Family Court judge referrals, there was a significant difference in distribution over the time of the Project. Almost one third of the first hundred referrals from judges came from one judge. As the service evolved a more even distribution among judges occurred.

Lawyer and judge referrals included cases where the parties lived as much as twenty to sixty miles away from the service. The judges who made the second and third largest number of referrals during the last ten months of the Project were from the Scarborough Court, which was several miles away from the Project offices. Clients involved in the Supreme Court, once the referral was made, showed no significant difference in attending appointments than those referred from the Jarvis Street Family Court. Therefore, it appears that the location of the service is not as significant as the support of the presiding judge and lawyers in facilitating client use of the conciliation service.

Table 8

LAWYER REFERRALS

1979 SAMPLE



COMPARISON OF HALF-TIME AND FULL-TIME CONCILIATION STAFF

The Conciliation staff complement originally proposed to the funding bodies was to include five social workers, including the Project Director, all having a minimum of three years' experience following attainment of a master's degree in socialwork. It was also proposed that the staff include both full and half-time personnel. It was hypothesized that half-time staff could be utilized efficiently in the brief service context of conciliation, and that such staff might be more readily recruited than full-time staff of equal calibre. Measurement of the comparative efficiency of full and half-time staff was undertaken on the basis of three aspects:

- 1) Would half-time staff be able to undertake a proportionate number of cases; that is, half the number of full-time staff?
- 2) Would half-time staff tend to retain cases for a longer period than full-time staff?
- 3) Would the ratio of direct to indirect service time vary between half-time staff and full-time staff?

These questions have been considered in the counselling field many times. The availability of half-time staff is attractive, but the cost effectiveness of such a staffing component has been questioned.

During the course of the Project, the half-time staff had contact with a proportionate larger number of cases than did full-time staff.

In regard to the ratio between new and old cases, full-time staff carried a significantly smaller number of old cases and tended to undertake new cases more rapidly.

These findings were reviewed further in regard to differences in individual staff member's training, and previous experience. The findings on these two aspects would appear to be related to the particular qualities of the individual conciliators.

Half-time conciliators spent about 4 hours of indirect service time for each hour of direct service given; full-time staff spent 8 hours of indirect time for every direct service hour. It would appear that the half-time conciliators were able to give more direct time than their full-time colleagues.

Again this finding was reviewed in regard to differences in individual staff member's training and experience. No common factor could be related to the finding other than the half-time and full-time employment variable. It appears that half-time conciliators were able to schedule interviews in such a way as to utilize their working hours more completely.

The Conciliation staff felt that one contributing factor was the quality of conciliation work. The constant pressure of working with clients who are in severe conflict was emotionally demanding for the conciliator. All staff experienced a need for relief from this pressure. Part-time staff could work more intensively for shorter periods of time, revitalizing their own resources out of work hours. Full time staff felt that maintenance of prolonged client contact on a full time basis was not possible, and that recouping of their own energy through less demanding activity during work hours was necessary.

USE OF INTERVIEW OF TIME

Table 9

PERCENTAGE OF TOTAL INTERVIEW TIME BY TYPE
OF INTERVIEW

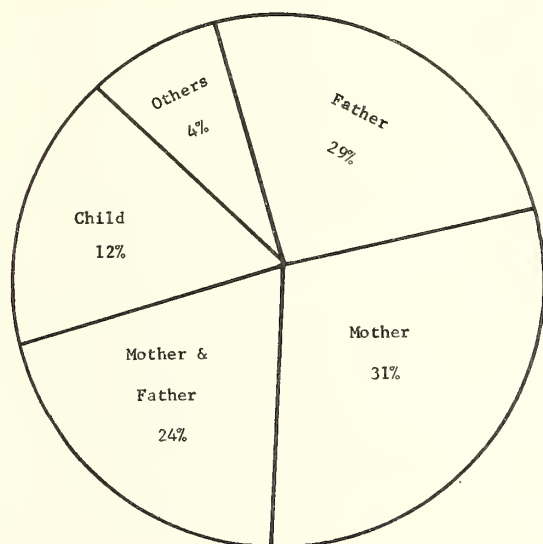


Table 9 shows how conciliators divided their interview time among various parties to a dispute. Included are interview time with fathers, mothers, fathers and mothers together, interviews with other persons considered significant to the dispute.

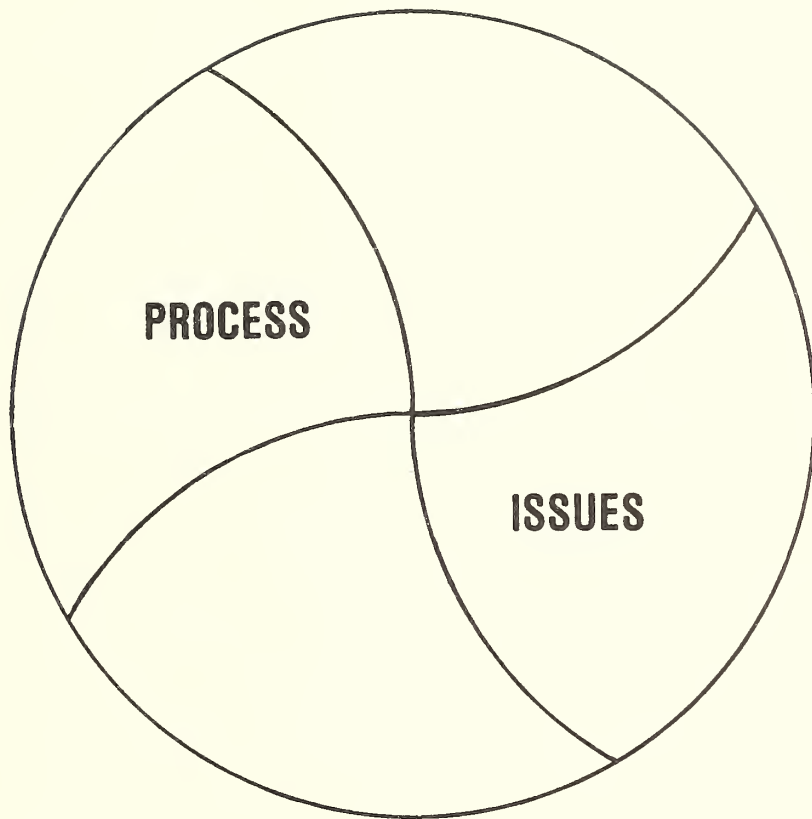
The Project eventually followed the practice of seeing each parent separately, followed by an interview with both together. There were some individual differences among conciliators; one conciliator saw parties together significantly less frequently than did the other conciliators, and another conciliator saw children much less frequently than did the others. However, on average conciliators spent almost equal time individually with fathers and with mothers. They spent slightly less time (24%) with mothers and fathers together, appreciably less time (12%) with children and 4% with other interested parties. The content and nature of the interviews is thoroughly discussed in the "Process and Issues" section of the Report.

STUDENTS

The Project funding proposal of 1975 included the concept of the Conciliation Project as a teaching centre. In line with this concept, in each of the academic years 1977/78 and 1978/79 two second year M.S.W. students from the Faculty of Social Work of the University of Toronto were placed with the Project.

The students participated in the Project as regular staff, attending all meetings, assisting in special events and carrying a caseload. In the academic year 1978/79 the two students together carried thirty-one cases. On an average that regular staff devoted 9.6 hours to a case, the students saved the staff about 300 hours of case time. However, the staff spent 275 hours supervising the students.

It was obvious that the students added a creative dimension to the Project that was stimulating for all the staff.



PROCESS AND ISSUES

THE CONCILIATION PROCESS

Conciliation, a term adapted from the labour relations field, has in recent years been used to identify a specialized counselling process useful to family members as an alternative to litigation in solving intra-familial disputes. The objective of conciliation is to help families reach agreement on issues, which if not resolved, could lead to a court trial. The process of conciliation utilizes elements of individual, marital, child and family therapy in conjunction with negotiation skills.

The intention of this section of the Report is to describe the conciliation process as developed within the Project. Case situations are used to illustrate significant issues arising from the experience of the Project conciliators in providing service to approximately 1,200 families over the three years.

THE LEGAL CONTEXT

Most people seen by the Project were already experiencing breakdown of the family, and were involved in seeking a legal remedy through the courts. The issues included a division of financial assets and property, custody and access arrangements for children, and financial support. Historically, litigation has been the means to achieve these goals. By definition, litigation is contentious, involving the family members in an adversarial process in which, through selective use of information, each party attempts to present a more convincing case than the other. Polarization of the positions of the litigants is inevitable.

Many former spouses are able to separate with minimal acrimony toward each other, but for some there is intense bitterness which an adversarial process may escalate. For this reason, it was most often the judge or lawyer who recognized a need for conciliation and took the initiative to refer to the Project.

The only requirement of the Project was that all disputants agreed to participate in conciliation.

THE EMOTIONAL CONTEXT

Though clients separate physically, they may not have emotionally accepted the loss of the former relationship, and the lifestyle and life aspirations based on the relationship. A legal dispute over custody, access, money or property may represent for one or both parties an attempt to retain some vestige of the prior relationship. Disengaging from the former partner may not occur even after some years. Episodic litigation may be used as a point of contact, albeit a negative one.

In some cases, underlying the presenting problems at the time of referral to the Project, there were emotional problems which might have required extensive individual, marital, or separation counselling. Our experience has been that these clients chose not to pursue such a course. On this basis, the Project offered service for a stated dispute, not for a wide range of personal problems. Nevertheless, the problems had to be taken into account by the conciliator in providing service.

The conciliator attempted to draw from all parties the factual and emotional information surrounding the stated dispute. For many people, conciliation represented their first experience in talking to a person who was responsive and empathetic, yet impartial and objective. Frequently conciliation was also the first constructive opportunity estranged spouses had to elaborate on the reasons for their relationship difficulties and eventual separation.

Because the issues relating to family breakdown are so highly charged with emotions, it is understandable that elements of blame and fault-finding are to be found in clients who utilize the conciliation counselling process. The deep sense of loss, the accompanying sense of failure and resultant lessening of self-esteem, are elements in the most amicable separations; families who proceed to litigation may be expected to experience particularly intense conflict.

Clients seen in the Project showed varied response in terms of their capacity and willingness to acknowledge the emotional components of their conflict. Whatever the nature of the response in this area, it did not necessarily prevent clients from resolving the dispute in question.

PROCEDURES AND TECHNIQUES OF CONCILIATION

Over the initial eighteen months of this three year demonstration Project, the following procedures evolved. As noted earlier, (pp. 5 and 6), most clients were referred by the Courts or by counsel. The referral sources understood that client information would be seen as confidential by the conciliator and that the Conciliation Report, written at the conclusion of conciliation, would include only a statement of those issues where an agreement had been reached. No assessment information and no recommendation was given to the

court by Project staff. The clients were asked to sign a form (this was not mandatory) emphasizing the confidential nature of the process and acknowledging that the conciliator would not be called as a witness in subsequent litigation. Although there was some question of the legal validity of the acknowledgement, no conciliator was subpoenaed during the three years of the Project.

Upon receiving a referral, frequently by telephone, the conciliator would ask each lawyer to clarify the fact situation, and to establish a basis for further contact, if required. If counsel were not involved, the conciliator would contact the clients directly to arrange the initial appointments.

Clients were seen separately prior to a conjoint interview for the following reasons:

- 1) Clients appeared able to discuss their feelings about themselves, their former spouse and their children more freely when seen separately.

- 2) Clients seemed more confident that the conciliator understood their position when they spoke with the conciliator on a one-to-one basis initially.

In almost all cases, after individual interviews, the clients were seen together. When appropriate, interviews were conducted with the children, new partners, and other persons important to the resolution of the dispute.

The conciliation process in the Project consisted, on the average, of a series of four to six interviews over a one to two month period; occasionally,

resolution of the dispute could be reached in two or three interviews; very rarely as many as twelve interviews were required. Participation of the lawyers was requested when a client was particularly unrealistic in his/her position. In those instances where extended counselling appeared necessary, the conciliator would arrange the appropriate referral.

A conciliation report was written and signed by the conciliator at the conclusion of each case. As noted earlier (p. 7) this report included the issues upon which the parties were in agreement and those issues upon which there was no agreement. This report was intended for use in one of three ways: by the parties as a record of the results of the conciliation; by the lawyers as a resource in the drafting of a separation agreement; and, by the court as a resource in making a disposition.

All parties to the conciliation process were encouraged to contact the conciliator should difficulties arise in the future. In a small number of cases, despite periods of agreement, chronic conflict was sufficiently severe that the conciliator recommended recourse to the legal system.

The following is a brief description of the interview sequence and focus as evolved in the Project.

In the first interview with the client the conciliator explored the client's expectations of the service, interpreted the extent to which the service might or might not meet the client's expectations. It was at this point that the client was requested to sign with the conciliator the acknowledgement that the process was confidential and that the conciliator would not be called as a witness in subsequent litigation.

Also information about the history of the marriage, the client's personal history and the relationship between spouses and their children was usually

forthcoming in the first interview. Anger, rejection, and guilt were feelings which most frequently seemed to be inhibiting the client's ability to focus on what might be a workable solution to the domestic dispute. The depth and complexity of these feelings in some clients required more than one individual interview.

Despite the preparation provided by the initial individual interviews, the first conjoint interview tended to be quite tense and potentially volatile. The relationship formed between clients and conciliator in the individual interviews was basic to the conciliator's ability to keep the discussion focused. The goal in the initial and subsequent conjoint interviews was to assist the parties to share with one another impressions and feelings about each other, the marriage, separation, their children, and the current dispute. The capacity of clients to do this varied from case to case. Regardless of the degree to which parties were able to communicate in a conjoint interview, it was through this exchange that the solutions to the dispute most frequently emerged.

Interviews with children are discussed in some detail in a subsequent part of this section. Briefly, involvement of children was useful in providing an opportunity for them to have impact on decisions affecting their lives, and in giving the conciliator some understanding of their feelings.

Interviews with children were of value in helping to focus their parents' attention on the child's needs, rather than solely on their own.

The impact of new partners on the resolution of conflict varied widely from case to case. In some situations the new partner's need to demonstrate superior parenting ability led to competition with both natural parents, thereby further entrenching the polarized positions of the parents. In such

cases the marital relationship between one parent and the new partner was usually tenuous. This required that the conciliator undertake the role of marriage counsellor concurrently.

Some new partners appeared to distance themselves from the dispute and were not active in the conciliation process.

A third group of new partners were able to act as intermediaries to reduce the conflict between the two former spouses. This group were particularly effective in providing support for the children involved.

Generally, other significant persons were interviewed if it was perceived by the client and the conciliator that their participation was important to the total process.

Conciliators kept few notes on interviews. It was found that extensive written records were not necessary in view of the intensity of the contact in a short period of time, and with the relatively narrow focus of the dispute resolution technique.

The following case situation illustrates the above procedural outline.

Case A

An access dispute was referred to the Conciliation Project by the presiding Judge during a proceeding in the Provincial Court (Family Division). At the time of separation two years previously, the children, now ages 10 and 7, had been placed in the legal custody of the mother; the father had access to the children every other weekend on both Saturday and Sunday, but returned the children

to their mother's home to sleep on Saturday evening. The current dispute was in regard to the father's request that the children stay at his home overnight, and the mother's refusal to grant this request.

Following brief consultation with each parent's lawyer, initial individual interviews were arranged with the parents. Several issues emerged.

The father felt that the mother did not want the children to stay overnight in his home, because she was resentful that he was living with another woman. The father also believed that the mother was turning their children against him. He maintained that the children asked him a number of times to be allowed to stay with him overnight.

The mother gave contrary information, stating that the children had expressly stated their objection to staying at their father's home overnight. She stated that she herself had no objections to this, but would not force the children to comply with their father's request. She acknowledged some anger towards her former husband, stating that at the time of the separation he had virtually disappeared for six months making no financial arrangements for the children or herself, and initiating no contact with them. In her view "now he expects to return and make any number of demands". The mother felt that this kind of behaviour was typical of the father throughout the years of their marriage. She stated that the children were fearful that their father would disappear again, and that he might attempt to take them with him. She felt that this was basic to their reluctance to stay in the father's home overnight.

In the initial interviews, the level of anger between the parents severely limited their ability to consider their children's needs objectively. The father's guilt about disappearance for six months appeared to be closely related to his tendency to over react to his wife's resentment of this absence. The mother conveyed the impression that the children were a possession that she did not want to share. There was bitterness and inflexibility in the way she referred to the years that she had lived with her former husband.

Subsequent to the initial interviews, the children were seen. They were cautious at first, and said they felt "unsafe" when they were with their father. Subsequently they referred to visits with their father in some detail and in so doing seemed very enthusiastic. They also spoke positively of their father's new girlfriend. Both children were perplexed as to why there was so much continued arguing between their parents. Their one regret was that the family had fragmented.

The conciliator's impression was that the children had strong bonds with both parents. Each child, in individual interviews, made reference to feeling "unsafe" with their father, but this term seemed artificial and inconsistent when considered in the context of the rest of the information they gave and their spontaneous and animated manner in talking about their father. It seemed to the conciliator that their use of the word "unsafe" was more reflective of their perception of what their mother wanted them to say rather than of their own feelings. When the conciliator's observations from the children's interviews were shared with the mother, the mother was able to consider that there was some disparity between the children's statements to her and to the conciliator

in regard to their father. In thinking about this, the mother was able to speak more openly about her own bitterness toward her former husband, and the possibility that her attitude might have an impact on what her children said to her about their father.

In a conjoint interview, the father and mother could discuss the feelings basic to the separation, the mother's resentment, and the father's guilt about the abrupt circumstances of the separation. The father was able to see from his former wife's behaviour that she was not in fact resentful of his present liaison. They were able to work out details for overnight visits. The mother had questions about the adequacy of accommodation in the father's home and those were resolved. Most importantly, there appeared to develop a more co-operative co-parenting attitude in both parents.

CUSTODY

Custody tends to be seen as one parent, at the time of a separation or divorce, taking the major responsibility for the children's care. The custodial parent has the right to make decisions and determine the child's upbringing, while the other parent is often restricted to a "visiting" role. In such a situation, the absent parent often feels left out or unneeded; children are frequently confused and upset by an arrangement that restricts them, for the most part, to one parent.

Custody is a particularly difficult conflict because the question as to which parent is to gain custody takes on the quality of a contest with a "winner" and a "loser". In an effort to win the case, parenting capability is often raised as a serious concern. When custody can be considered in terms of the

children's needs and the reality of the parents' situations and their ability to provide for the children's needs, it is possible to eliminate the pressure for each parent to attempt to prove that the other is "unfit".

In the experience of the conciliators, when parents were able to separate the issue of custody from the issue of separating, and to look at the responsibility for their children as a shared one, the need for strategies and control tended to disappear.

In order to help people make this shift the conciliator's task became one of helping the parties recognize their own needs, while concurrently developing awareness of the needs and wishes of their children.

Case B

The parents of a three year old girl were referred to the Conciliation Project. The mother was making application to the court for custody of their daughter; the father had had custody of this youngster for approximately one year. The mother stated many concerns both from the past and in the current situation. In a joint interview with the father, she made clear her intense bitterness toward her husband for terminating the marriage. She focused on a number of incidents from three to four years previously that were still, in her perception, very painful and were examples to her of the injustices done to her by her husband. In the course of this she was able to indicate the extreme personal hurt that she had been feeling. After this point in the process, she was able to acknowledge the fact that their daughter was receiving good care from the father and was indeed happy in his home. She began to separate her own feelings of

loss from the issue of her daughter's well-being. Thereafter she was much less pressured to consider a shift in the child's custody; conversely, the child's father could then respond with the suggestion of more liberal access between mother and daughter.

Discussions focused on how each parent could best contribute to their child's upbringing given their financial, geographic, and emotional situation. Some of the anger, sadness, or other of the many feelings present at the time of the separation, were acknowledged and put in perspective in relation to the parents' desire to have a continuing relationship with their child.

In helping to work out a plan for custody, children were also interviewed. Their needs and wishes were often shared with the parents either directly or indirectly as noted in case A. The inclusion of children in the conciliation process and the information that they could make available has, in the experience of the Project staff, been a valuable catalyst in diffusing conflict and working toward a solution acceptable to all family members.

JOINT CUSTODY

In recent years, much interest has been shown in the concept of joint custody. Whether or not it is possible to achieve a joint custody arrangement, it has been the experience of the Project that shared responsibility for co-parenting of children is a desirable goal, regardless of the legal status. In other words, whether there is a "winner" or "loser" in a custody dispute, trust and cooperation between parents is still needed to provide a healthy atmosphere for the children. Conciliators have also found that, regardless of where a child actually lives, the commitment of both parents to maintain a consistent relationship with their children, and the ability of each to

support the other's good parenting, are the most important factors in achieving a satisfactory custody arrangement.

Children's needs change as do family circumstances; therefore, whatever arrangements are agreed upon for custody and access, there is often need for change over the child's growing years. Joint custody may create the environment to facilitate such flexibility.

ACCESS

Access disputes, like custody disputes, place children as the focus of the conflict. Access is a means of recognizing and assuring the continued importance of each parent's relationship with their children. Access may be ordered by the court with greater or lesser specificity. However, in all instances it remains the responsibility of the parents to carry out such access in a manner which is beneficial to their children. If access is not to be the focus of ongoing disputes and/or litigation, the parents must develop a degree of ability to cooperate.

Problems arise in access when parents are not in agreement with either the fact of access, or with the details of the access arrangements. Frequently such conflicts reflect the previous relationship of the parties, the circumstances of the separation, and the ability of both parents to separate their children's needs and feelings from their own. Attitudes toward access may reflect the immediacy of the turmoil around separation and divorce, or an extreme polarization in the views of the former spouses generated over a period of time as a result of long standing chronic conflict. Access problems in the experience of the Project conciliators were frequently interwoven with other issues such as financial support and/or custody.

In access disputes within an adversarial atmosphere of winning or losing, parents frequently want the children aligned "on my side". Such efforts at alignment, often unintentional, place the children in the position of holding the balance of power in the adult inter-spousal conflict. In the extreme case, a child may be totally colluding with one parent, with flat exclusion and rejection of the other as a means of coping with the parental conflict.

Case C

An adolescent girl "chose" to remain with her father when her mother left the home taking the younger children with her. The girl refused any communication with other members of the family. The father supported this attitude by involving her extensively in the legal proceedings, allowing her to read his affidavits in which there were statements as to how "bad" her mother was. Further, the father encouraged his daughter's stated wish to provide home care for him.

Case D

For five years parents had continuously fought over their son. In his presence there were open fights, and more indirectly, access was denied whenever support payments were late. The child perceived access visits as being dependent upon one parent's reliability in paying the other. Overtly and covertly this child was a messenger between the conflicting parents. The child stated his discomfort to the conciliator about speaking to either parent about the situation, and his fear that any discussion with them might precipitate another explosion.

The task of the conciliator was to accept the parents' underlying frustration and anger as the reason for their actions and to assist the parents to understand the implications of the conflicts on the emotional well-being of the child. Most parents were able to change what they were doing on this basis. A few were not.

INTERVIEWS WITH CHILDREN

Because children are deeply affected by their parents' disputes, Project staff found it was often appropriate to involve them in the conciliation process. It is important to note that there is a need in each situation to consider the objectives and merits in interviewing children. At the outset, it was explained to parents and their children that the ultimate solutions to the dispute were the responsibility of the parents. However, Project staff found that it was important for the children to know that their views were heard.

Acknowledgement of the children's views and needs was significant not only for the children but for many parents. Often spouses were so overwhelmed by their own needs in the crisis of separation that they were not able to perceive and understand their children's needs and wishes. Moreover, in many disputes, one or both parents were feeling defensive and unable to listen to what the other had to say about the children.

Most parents reacted positively when the question of involving their children was raised by the conciliator. Many indicated they had felt concerned about their own objectivity in assessing the children's needs, and were worried that their children might feel troubled but unable to express this openly to either parent.

For the children, it appeared often to be a relief to talk to someone to whom they could express their feelings regarding the dilemmas in which they felt caught. Many felt angry and confused about their parents' separation and fighting; some were expending undue energy in trying to solve their parents' problems. Many children perceived themselves as having caused the family breakdown. Most were wondering how they could express thoughts and feelings to their parents without alienating or hurting one of them.

After the child and conciliator talked about such issues, they discussed together what could be done with the concerns raised. In some cases, it was decided that the child should talk to one or both parents, either with or without the presence of the conciliator. In other cases, the conciliator met with the parents apart from the child to discuss the child's needs and to assist the parents in understanding these needs.

Case E

An example of this process was a situation with a fourteen year old girl whose parents each wanted custody and considered that the girl really wanted to be with him or her.

When the conciliator talked with the girl, she immediately indicated that she wished to live with her dad. When this was explored, she was able to clarify that she really wanted to stay at her home with her mother and two brothers, but had felt she must move in with her dad to look after him as she thought he was very lonely. Further, she felt angry with her mother whom she blamed for the separation. The girl agreed to broach these issues with the conciliator and each parent. When she understood from them more about their

reasons for the separation, and when she was reassured by the father that he could survive on his own, she and her parents felt comfortable with her remaining principally with her mother.

Other children, particularly younger children, may be less able to verbalize or understand their concerns.

Case F

An example of this was a situation where a mother had been denying access off and on for two years.

A nine year old boy arrived with his mother and younger brother and immediately announced that he was there "to get rid of his dad". However half an hour later, when in the playroom and painting a giant black blob on the paper, he began to complain bitterly that his dad ignored him and always catered to his younger brother. He complained that his dad left his mother after only about twenty-five fights, and he felt that he should have stayed until there had been a least thirty fights! He pointed out that his mother was very excitable and often upset, and it was now up to him to try to settle her down after the continuing fights over access.

"Getting rid of his dad" was obviously not the best solution for this child's complicated problems. In this case the conciliator's impression of the situation was discussed with both parents and both lawyers. The lawyers, in understanding the situation, were able to see their clients' complaints regarding access in perspective and encourage cooperation "for the child's sake". The parents gained some insight about this boy's needs and began to deal with him and the access arrangements differently.

In discussion with parents, a multitude of factors regarding their children may be looked at where custody or access is in dispute. The nature of the relationship between each child and each parent was found to be crucial. Further, how the parent's disputes were affecting these parent-child bonds was vital. An understanding of how the children related to one another was most helpful.

The goal of such discussions was to work out a plan for each child that took into consideration first, the child's need for a firm relationship with both his mother and his father and, secondly, his need for the stability and security of a home base. Listening to the children themselves was an important aid in ensuring that their needs and rights were protected.

FINANCIAL AND PROPERTY MATTERS

As noted on page 14, these were not issues that were perceived as being appropriate for conciliators. This impression was arrived at after the first year's experience. It was based on the fact that financial and property issues do not ordinarily fall within the competence of conciliators with a behavioural science orientation. This does not mean that in cases where relatively small sums are involved, conciliators could not be trained to resolve this type of issue. However, this approach was viewed as not being economical given the cost of conciliator time, and given the other resources available within the Toronto Family Court and the Toronto community. When complex questions concerning money and property were involved, it was apparent that specialized legal and accounting expertise was required.

THREATENING AND ASSAULT

Threatening and assault referrals within the Project represented a complex and varied family profile, in which physical and/or verbal abuse was present.

In the majority of such referrals the families were living together or temporarily separated. In the experience of the Project, it may have been either an isolated incident, or a chronic pattern of abusive behaviour, whereby a person, usually the woman, was frightened and frustrated and sought some assistance from the authority of the Court. The significance of violence cannot be minimized. The court procedure, through a use of crown counsel,³ in employing authority and concrete consequences for such behaviour is extremely important.

The role of the conciliator tended to focus upon the family as a unit, exploring the history of the members, their present circumstances and wishes for the future. These factors, with the collaboration of the clients, often suggested alternative ways of dealing with their problems. When the family came to recognize that assaulting behaviour was not a solution, it was important to clarify and support the court procedure as one deterrent. Individual circumstances also suggested marital counselling, exploring reconciliation, separation counselling, and the utilization of community resources.

Case G

In one instance a woman, who had previously withdrawn three assault charges, was encouraged to follow through with the court procedure following a serious physical and verbal assault by her husband. He appeared to have a severe alcohol problem and there had been numerous separations. Although her husband refused to participate, she was encouraged to consider her role in the problems, to look more closely at the effects on her daughter and to participate in an Alanon Group. She became more realistic in her expectations

³The services of crown counsel are available at Provincial Court (Family Division) at 311 Jarvis Street but are not available in most Family Courts in the Province of Ontario.

for herself and her husband and more direct in her dealings with him. He was placed on a Peace Bond.

Case H

For another couple, it was their first appearance before the court. During several interviews they were encouraged to explore their marital and family relationships. The wife was primarily concerned with her husband's apparent disregard for herself and the children, in favour of his parents. The husband felt an equal lack of recognition of his hard working, long range goals for his family. They were encouraged to more openly and directly express themselves, as well as be more sensitive to one another's needs. While things quite quickly improved, it was strongly suggested they seek family counselling should further problems arise.

However, where family members neither wanted nor saw the need for change and where there was little or no recognition of authority, it was unlikely that any of these alternatives would be taken. Violence may have then continued, with the court involved as one of the means by which the parties continued to express their anger and bitterness and ambivalently sought redress.

COLLABORATION WITH LAWYERS

An important contributing factor to the establishment of the Project was the strong support given by members of the judiciary and by lawyers specializing in Family Law matters. Throughout the Project's demonstration years, there was close collaboration between behavioural scientists

and representatives of the legal profession. One manifestation of this can be seen in the composition of the Project Board of Directors. Another was the frequent consultations between Project staff and the legal profession both in formal seminars and also on a case by case collaboration. In the Fall of 1978, several small groups of Toronto lawyers who used Conciliation services met with the Conciliation staff in order to provide information to improve their collaboration. The increasing understanding of each profession's role in working with separating or divorcing families has been a particularly dynamic and satisfying aspect of the Project.

The Metropolitan Toronto area has a large number of lawyers specializing in Family Law, who are all too familiar with the destructive affects on families of intractable intrafamilial disputes. While these lawyers recognized that such disputes might not be resolved without litigation, they also appreciated that referral of the disputes to conciliation provided an alternative that saved their clients time and emotional distress. From this stance, many lawyers over the past three years have initiated referrals to the Project.

At the point of referral, the conciliators sought the facts of the situation from counsel. Frequently, during the course of conciliation the Project staff would confer with counsel in order to ensure that the rights of all parties were not in any way infringed. Often staff sought the assistance of counsel in clarifying with a client what might be realistic solutions to the dispute.

In our experience, most lawyers were concerned to ensure rapid referrals when, in their view, the disputing parties were indicating feelings of depression, extreme anger, and bitterness, or when there was some possibility of reconciliation. In such situations, lawyers pointed out that they felt

untrained to deal with these feelings, and that their clients were less able to make decisions about their lives until there was resolution.

The content of discussions with lawyers varied from case to case. Personal and inter-personal dynamics were shared on a selective basis with lawyers to assist them in working with their clients. Most conversations with lawyers were by telephone.

Case I

A "custodial" mother had obtained an interim order in court to deny access to the two sons, ages 15 and 10, by the father. When the conciliator talked with each member of the family, it emerged that the oldest boy appeared overly concerned with his mother's well-being. He perceived himself to be in the role of protector of his mother, particularly in regard to his father who had in the past been verbally abusive. The boy's preoccupation with this appeared to be to the detriment of his own school and social life. Concurrently, the younger boy appeared to be closely identified with his father and was resentful and sad at the court order denying access, which effectively made his continuing relationship with his father impossible. The two boys, who each identified with a different parent, had been experiencing increased difficulty in their own relationship. Discussion with both lawyers resulted in each discussing separately with his own client the adverse implications of the current situation in terms of the children's development. Subsequently, the matter was returned to court and access with the youngest boy began immediately.

From the experience of the Project staff over the three years of the demonstration, the importance of collaboration between counsel and conciliator cannot be over stressed.

TRAINING FOR CONCILIATION COUNSELLING

As noted earlier conciliation counselling combines the knowledge and expertise of the experienced behavioural scientist and the dispute solution skills of the labor relations negotiator. In this Project, all staff had several years experience subsequent to obtaining a Masters Degree in social work. Extensive knowledge of intra-familial dynamics, child development, and personality development were found to be necessary. As conciliation experience was gained, staff evolved a markedly more confronting and directive stance, well beyond the level developed in their previous training and counselling experience. Further, with the benefit of the experience of others in the conciliation counselling field, staff recognized the necessity for review of their own personal bias in regard to family life and in particular to marital breakdown. Although ongoing review of the techniques of conciliation were a major inservice training objective, the staff, in conjunction with consultants from the legal profession, social work and psychiatry, undertook the following program.

At the outset of the Project, there was an initial orientation program for staff presented over four weeks, comprising twelve hours of instruction time each week. The course content was equally distributed among Family Law legislation, court procedures and conciliation philosophy and technique. Experienced practitioners in each of the three areas served as instructors.

For a period of one year, the staff undertook pure consultation on a case focus basis with a consultant experienced in conciliation counselling.

Throughout the life of the Project experts in various fields such as family counselling, work with new Canadians, alcohol and drug addiction, and family law were invited to meet with the staff.

The following is a general outline of a program designed to train people to work in this field. The items mentioned are those that the conciliators believe to be of basic importance. It is suggested that a combination of seminars and case consultations be used in the training process, with the heavier emphasis being placed on case consultation.

- 1) Introduction
 - changing perspective on marriage relationships and child rearing
 - the development of conciliation as a concept and a service in North America
- 2) The Separation Process
 - an examination of the emotional components of separation
 - grief
 - despair
 - anger
 - resolution
 - re-orientation
- 3) The Effects of Separation on Children
 - separation and its effects at various stages of child development
 - the child's perceptions of separation
 - the period of adjustment
 - visiting
 - healing the wounds
 - the appearance of new partners

4) Domestic Litigation

- an examination of statutes covering issues of domestic disputes, especially custody and access
- attendance at various levels of courts to observe trials regarding custody and access
- presentation and discussion by a Provincial Court Judge (Family Division) and a Supreme Court Justice on matters of custody and access
- presentation and discussion by a practicing lawyer who specializes in Family Law

5) The Legal Context

- the adversary process
- the role of the lawyer
- the use of information by the counsellor

6) The Conciliation Process

- consulting with the lawyer
- outlining the process, setting the tone
- establishing rapport with each client individually
- understanding each client's position, past and present
- narrowing the issues
- focusing on the child's needs
- dealing with the relationship problems
- working out the agreement details
- consultation with lawyers
- conciliation report
- referral

ADMINISTRATIVE SYSTEMS

A file was opened for each case at the time of referral. The case was recorded in the log book containing the following information: the file number, the name of the client, the conciliator, the referral source, the referral date and the adjournment date (if the matter was before the court). At the conclusion of conciliation the termination date was recorded as well. The files were kept numerically with an alphabetical index.

Financial statements were prepared each month. These statements included the amount expended each month, the amount expended to date, the amount budgetted each month, the amount budgetted to date, the annual budget, and the amounts over or under budget each month and to date. The figures were presented for each of the fifteen budget item categories and total expenditures. The figures were also presented under each funding body, the Ministry of the Attorney General and Health and Welfare Canada, Welfare Grants Division.

Each conciliator kept track of time through the use of a chit system. The system was one generally used by lawyers for billing purposes. At month-end the office staff sorted the chits according to the seven budget functional categories to accumulate the total time spent each month. Also a copy of each chit relating to time spent on a case was filed under the respective case. The advantage of this system was its ability to provide cost analysis and case management data with a minimum of conciliator involvement.

Samples of the financial statement format and the costing chit follow immediately.

						\$
DATE	INITIALS	CLIENT	MATTER	CODE	TIME	MONEY
					HOURS TENTHS	DOLLARS CENTS

CODE CLASSIFICATION

A COURT APPEARANCE
B BRIEFING
C CONFERENCE

D DICTATION
F FACTS INVESTIGATION
P PREPARATION

R	RESEARCH
S	PETTY CASH
T	TELEPHONE

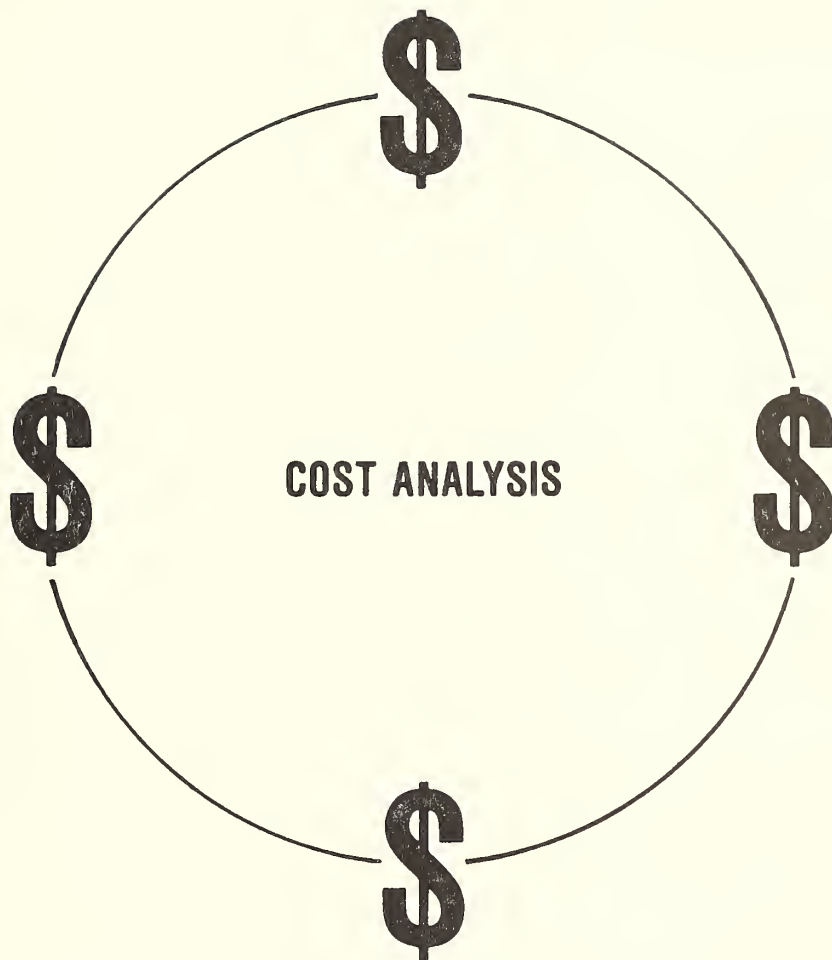
V	TRAVEL
O	OTHER

ADDITIONAL COMMENTS: _____

RECEIVED

15 OCT 1980 10 13

	TOTAL	HEALTH AND WELFARE	ATTORNEY GENERAL	ADMINISTRATIVE SERVICES MINISTRY OF THE ATTORNEY GENERAL	HEALTH AND WELFARE	ATTORNEY GENERAL
DIRECTOR						
ADMINISTRATIVE ASSISTANT						
HALF-TIME COUNSELLORS (2)						
FULL-TIME COUNSELLORS (2)						
QUARTER-TIME COUNSELLOR						
FRINGE BENEFITS						
SECRETARIAL SERVICES						
RESEARCH						
TRAINING AND DEVELOPMENT						
RENT						
TELEPHONE, STATIONERY, POSTAGE & SUPPLIES						
TRAVEL						
INTERPRETER SERVICES						
CONFERENCE						
CONFERENCE RESEARCH						
TOTAL						



COST ANALYSIS

PURPOSE AND SOURCES

The purpose of the Cost Analysis is to assist the Ministry of the Attorney General to project costs for conciliation services.

In the preparation of this part of the Report the Project wishes to acknowledge the services of the following consultants:

William L. Scott

Audit Supervisor

Management Supervisor

Audit Branch

Michael Baker

Court Administrator

Director of Court Services

Member of the Board of Directors

Alex Mackay

Director of Provincial Courts

Their most helpful advice and assistance is appreciated as is the expert knowledge they so willingly shared.

The cost analysis is discussed under two headings: A) Conciliation Project and B) Provincial Court (Family Division), 311 Jarvis Street.

Under the first heading is presented the costs of conciliation based on the experience of the Project.

The second heading applies the results of this review to the operation of the Provincial Court (Family Division) situated at 311 Jarvis Street.

The resources used were:

- 1) the expertise of committee members and other resource persons consulted.
- 2) the time study analysis ("1978 sample" described in section "Statistics and Impressions".)

This period was chosen because of the rate of referrals and the expectation that, after two years experience, conciliators would be working at a level that one would expect in an ongoing service, given the reduction in experimentation and the focus on relatively well defined goals.

- 3) the referral source analysis ("1979 sample" described in section "Statistics and Impressions".)

This period was selected because it was sufficiently distant from the October 1978 Conciliation Conference (page 71) to benefit from the exposure of the Project at the Conference, while, at the same time reflecting relatively realistic picture, both in numbers and referral source, of what one might expect in an ongoing service.

- 4) the current budget of the Provincial Court (Family Division) 311 Jarvis Street, converted to a cost centre basis.

It is hoped that the information presented here will be of some benefit in costing a service for other parts of the Province. The ratios and averages formulated herein are based upon a population of six conciliators and ten judges. Because of the breadth of this population, it is believed that these ratios and averages may have general application.

A) CONCILIATION PROJECT

1) The Conciliation Model

The cost analysis was based on the closed conciliation model, utilized by the Project, that is a model wherein the conciliator provided no assessment data to the court and was not expected to testify in court. Besides the significance of this procedure in dispute resolution, it was of value in minimizing costs because:

- a) a minimum of time was required to write and reproduce reports - rarely did Conciliation Reports exceed one page; and,
- b) the conciliator did not spend time either in court or waiting to appear in court.

2) Ratios Used In The Cost Analysis

- a) Ratio of total hours to productive hours.

Productive hours were considered to be 80% of total hours. The remaining 20% consisted of time taken for statutory holidays, sick leave, vacations and coffee breaks.

b) Ratio of salaries to other expenses.

Other expenses were estimated at 20% of salaries.

These other expenses included such items as paper, materials, postage and supplies generally.

Furniture and rent were not included.

This ratio was based on the current budget of the Provincial Court (Family Division), 311 Jarvis Street.

c) Ratio of secretarial support services to conciliators.

It was estimated that in a closed conciliation model one secretary could handle the secretarial work for six conciliators. This estimate was based on the experience of the Project.

d) Ratio of levels of efficiency.

This ratio deals with conciliator's direct counselling time with clients to indirect counselling time. The indirect counselling time included the time taken to consult with lawyers and agencies, and to write reports. For the purpose of this analysis three levels of efficiency ratios have been developed.

<u>Levels of of Efficiency</u>	<u>Direct Time</u>		<u>Indirect Time</u>
A	1 hour	to	1/3 hour
B	1 hour	to	1/2 hour
C	1 hour	to	1 hour

These ratios were derived from the "1978 sample" referred to above.

3) Total Cost for Each Conciliator Productive Hour

a) Secretarial costs.

Annual salary: \$14,000, including fringe benefits

Hourly cost at 1,885 hours a year (36.25 hours/
week x 52 weeks):

$$\$14,000 \div 1,885 = \$7.43$$

Cost for each productive hour, $\$7.43 \times 100/80 = \9.29

Other expenses for each productive hour at

$$20\% \text{ of salary: } \$9.29 \times 0.2 = \underline{1.86}$$

Cost for each productive hour including

other expenses \$11.15

b) Secretarial costs for each conciliation hour.

With one secretary serving 6 conciliators, 1,508
productive secretarial hours (80% of 1,885 hours)
serve 9,048 productive conciliator hours (6 times
80% of 1,885 hours)

Therefore, secretarial cost for each conciliator
productive hour including expenses:

$$\frac{1,508}{9,048} \times \$11.15 = \$1.86$$

c) Conciliator costs.

Annual salary: \$22,620, including fringe benefits

Hourly cost at 1,885 hours a year

$$\$22,620 \div 1,885 = \$12.00$$

Cost for each productive hour, $\$12.00 \times 100/80 = \15.00

Other expenses for each productive hour at

$$20\% \text{ of salary: } \$15.00 \times 0.2 = \underline{3.00}$$

Cost for each productive hour

including other expenses \$18.00

d) Total costs for each conciliator productive hour.

Conciliator cost for each productive hour,

including expenses

\$ 18.00

Secretarial cost for each productive hour,

including expenses

1.86

Total cost for each conciliator productive hour

\$ 19.86

4) Total Cost for Each Conciliator

These costs include all other support costs such as supplies and secretarial services.

1,508 (annual productive hours) x \$19.86 (cost for each conciliator productive hour)

= \$29,950.00 per annum

5) Cost for Each Case by Type of Referral

This estimate is based upon average conciliator time and the cases in the "1978 Sample". It is presented for each of the three levels of efficiency, A, B and C using a total cost for each conciliator productive hour of \$19.86.

Issue	% of Total Cases	Average Direct Time in Hours	Levels of Efficiency					
			A		B		C	
			Hrs.	Cost	Hrs.	Cost	Hrs.	Cost
Custody & Access	71	7.3	9.7	\$193	11	\$218	14.6	\$290
Threatening & Assault	12	3.2	4.3	85	4.8	95	6.4	127
Reconciliation	7	4.1	5.5	109	6.2	123	8.2	163
Financial	7	5.3	7.1	141	8.0	159	10.6	210
Other	3	6.7	8.9	177	10.1	200	13.4	266
Proportionate Average		6.4	8.5	169	9.6	191	12.8	254

Cost for each hour of direct counselling time, based on proportionate average.

\$26.48

\$29.79

\$39.72

Cost for each hour of direct counselling time, minus secretarial costs.

\$24.00

\$27.00

\$36.00

Assuming that secretarial costs remain constant regardless of whether the conciliation is done by staff attached to the court, by independent practitioners or private agencies and assuming that a rate of \$25.00 per hour would be acceptable to the private sector, it appears that at B and C levels of efficiency it would be more economical to contract the service to outside parties. C level of efficiency was achieved by conciliators working full time for the Project, and A level of efficiency was achieved by conciliators working half-time for the Project. A number of factors were reviewed, including the following: caseload, nature of conciliation, background, training and method of working with lawyers and other resource persons. There appeared to be nothing to explain the differences in efficiency between full and part-time conciliators, other than whatever dynamics might be present in the differences between full and part-time employment.

6) Monthly Case Load Carried By Each Conciliator

The following table is based on 125.7 productive hours per month (80% of 1,885 annual hours ÷ 12) and is presented for each of the three levels of efficiency A, B and C, using the proportionate average time for each case (see item (5)).

<u>Level of Efficiency</u>				<u>Monthly Case Load</u>
A	125.7	÷	8.5	= 14.8
B	125.7	÷	9.6	= 13.1
C	125.7	÷	12.8	= 9.8

7) Number of Referrals Each Month

The following table is based on a four month analysis from January through April 1979 and is presented by source of referral.

<u>Source of Referral</u>	<u>Average Per Month</u>	<u>% of Total Referrals</u>
Family Court (311 Jarvis St. and Scarborough)	20.25	51%
Intake (311 Jarvis St.)	2.25	5%
Supreme Court	2.25	5%
Lawyers*	11.25	28%
Agencies	1.75	5%
Public	<u>2.50</u>	<u>6%</u>
	<u>40.25</u>	<u>100%</u>

*Lawyer referrals, for the most part, were in regard to cases which were before the Supreme Court.

8) Staff Requirements Based on Case Load, Levels of Efficiency and
Combinations of Referral Sources

a) Family Court (referrals from the Judges of the Court)

<u>Efficiency</u>	<u>Number of Cases</u>		<u>Monthly Case Load</u>		<u>Number of Conciliators</u>
A	20.25	÷	14.8	=	1.4
B	20.25	÷	13.1	=	1.5
C	20.25	÷	9.8	=	2.1

b) Family Court (referrals from the Judges of the Court and Intake Service)

A	22.50	÷	14.8	=	1.5
B	22.50	÷	13.1	=	1.7
C	22.50	÷	9.8	=	2.3

c) Family Court (Judges of the Court and Intake Service) Supreme

Court and Lawyers

<u>Efficiency</u>	<u>Number of Cases</u>		<u>Monthly Case Load</u>		<u>Number of Conciliators</u>
A	36.00	÷	14.8	=	2.4
B	36.00	÷	13.1	=	2.7
C	36.00	÷	9.8	=	3.7

d) Family Court (Judges of the Court and Intake Service) Supreme

Court, Lawyers, Agencies and Public

A	40.25	÷	14.8	=	2.7
B	40.25	÷	13.1	=	3.1
C	40.25	÷	9.8	=	4.1

9) Ratio Family Court Case Load to Conciliation Referrals

The following table sets out the percentage of Conciliation referrals to total domestic case load of the Family Court situated at 311 Jarvis St. (Family Law Reform Act and the Criminal Code Cases) The tables is based upon monthly average case load of the Court during the period from April 1978 through January 1979, and the monthly average of conciliation referrals January 1979 through April 1979. The table is presented on the basis of the combination of referral sources listed above.

<u>Combination of Conciliation Referrals</u>	<u>Number of Conciliation Referrals</u>	<u>Number of Court Cases</u>	<u>Percentage</u>
a)	20.25	225	9%
b)	22.50	225	10%
c)	36.00	225	16%
d)	40.25	225	18%

B. PROVINCIAL COURT (FAMILY DIVISION), 311 JARVIS STREET

1) Analysis of Cases by Cost Centre

The analysis of the Jarvis Street Court is based on the following cost centres:

- Information Desk
- Intake
- Enforcement
- Payments
- Administration Services
- Administration
- Judges
- Records
- Scheduling
- Court Reporters
- Judges' Secretaries
- Courtroom Attendants

These centres are divided into four categories, as follows: those centres for which conciliation would provide no economies; those centres for which conciliation might affect economies, but for which little data is available; Intake Service; and, cost centres providing direct court room services.

a) Cost Centres for which conciliation would provide

no economies:

- Information desk
- Payments
- Administration services
- Administration
- Records
- Judges' Secretaries

b) Cost centres for which conciliation might affect economies but for which little or no data is available:

- Enforcement

It is expected that conciliation services would provide little saving in this area, although the point has been made that less enforcement is required in those cases where a conciliated agreement has been reached. There is, however, no data from the Project which supports or refutes this point. Moreover, financial issues constituted only 7% of the case load in the 1978 sample, and the agreement rate of 57% was significantly lower than that of all other categories except that of Threatening and Assault. It is possible, however, that in cases where access and custody matters are resolved, enforcement is less of a problem. This indeed might be the case but, again, there is no data from the experience of the Project.

- Scheduling

With a reduction in court time generated through conciliated agreements more cases might be processed through scheduling in a shorter period of time.

c) Intake Service

The relationship between Intake Service and conciliation is unclear. There are perhaps several reasons for this, but a significant factor is the impact of the Family Law Reform

Act on the nature of the Intake Service. Indeed the Intake Service at 311 Jarvis Street has been restructured and renamed the "Court Counselling Service", and the conciliation service pioneered by the Project now functions within new context.

At the present time it has been suggested that cases referred from Intake counsellors to conciliators generated a savings in time for the Intake Service. This assertion was made on the basis, that if the conciliator did not work on the case, the Intake counsellor would spend more time on the case, albeit less and different from the time expended by conciliators. On the other hand, the time spent by the Intake counsellor preparing the referral to conciliation might be as much as the Intake counsellor would have spent if there had been no referral.

If the Intake Service, as mentioned above, were to redefine its responsibilities to include conciliation counselling as one of its services, it is expected that the cost to the Intake Service would be the same as the cost to a conciliation service. In fact, if the two conciliators, who previously were Intake counsellors, were to return to the Intake Service and focus primarily on conciliation, and if they functioned at the B level of efficiency as presented in Section A of this analysis, they would be able to provide all the conciliation counselling for the Jarvis Street and Scarborough

courts. This would, of course, involve little or no increase in cost, over and above that already committed under the contracts of these two civil servants.

During the four month period from January 1979, through April 1979, only ten cases were referred from Intake counsellors to conciliators. However, it is important to note that encouraging people to use conciliation upon their first contact with the Intake Service has not been particularly successful. When conciliators, as a requirement of the initial stages of the Project, were drawing clients at random from the Intake stream of the Jarvis Street Court, agreements were obtained from all parties to use the conciliation service in approximately 25% of cases.

In summary, it is assumed that a referral from Intake counsellors to conciliators might save Intake counsellors time. However, this must be qualified on two points:

- The number of referrals at present from Intake Counsellors to conciliators seems insignificant.
- In making the referral to a conciliator the Intake counsellor might spend the same amount of time as would be spent had there been no referral.

Should the Intake Service, as restructured, include conciliation services, it is assumed that the costs would be consistent with the cost structure outlined in Section A of this analysis.

d) Cost Centres providing direct court room services:

- Judges
- Court Reporters
- Courtroom Attendants

Cost for each available court room hour is calculated at the rate of \$93.75. This figure is based upon information derived from the budget of the Provincial Court (Family Division), 311 Jarvis Street.

In a study, conducted by the Project, the Judges of the Jarvis Street Court were interviewed and their opinions sought as to the time, if any, saved in particular cases by conciliation. The study indicated that conciliation services saved approximately $3\frac{1}{2}$ hours of court time per case. The Project considered that since this was a subjective estimate, it might be high. Nevertheless, it is believed that this estimate reflects the value and importance that judges place on the conciliation service provided by the Project.

To be conservative for purposes of this analysis, the time saved has been reduced from $3\frac{1}{2}$ to $1\frac{1}{2}$ hours.⁴ On the basis of \$93.75 for each hour of court time, the saving of $1\frac{1}{2}$ hours means a saving of \$140.62.

⁴The 2 hour reduction is also intended to take into account the 30% of the cases referred in which an agreement is not reached.

In addition, with two lawyers involved, a saving of 1½ hours would amount to \$95.00 reduction in legal costs under the Legal Aid Plan. For litigants who retain counsel on a private basis, the saving would be even greater depending on the fee charged by counsel less any costs awarded to that litigant at trial.

2) Summary

It is obviously difficult to calculate precise savings generated by conciliation in dollar terms. From the above analysis by cost centre, it appears that conciliation can achieve savings in court room time, may achieve saving in enforcement and scheduling, and probably achieves no savings in other cost centres. Court room savings have been calculated at \$140.62 per case and an additional saving of 10% has been arbitrarily placed on enforcement and scheduling, giving an estimated savings per case of \$154.68, rounded to \$155.00.

The net cost of conciliation may be calculated as follows:

Levels of efficiency	<u>A</u>	<u>B</u>	<u>C</u>
Cost per case of conciliation (see Section A, item 5)	\$169	\$191	\$254
Savings from reduced court time	<u>155</u>	<u>155</u>	<u>155</u>
Net cost of conciliation	<u>\$ 14</u>	<u>\$ 36</u>	<u>\$ 99</u>

If cases were contracted to outside parties on the basis of \$25 per hour, the cost for each case, based on information in Section A, item 5, would be $6.4 \times \$25 = \160 , plus secretarial costs of $\$1.86 \times 6.4 = \11.90 making a total cost of \$171.90. On this basis the net cost of conciliation would be \$17 per case: \$172 less \$155 savings from reduced court time.

The following table lists the net cost of conciliation services on a monthly and yearly basis. This table has been compiled by the use of the following data: the mix of four referral categories established in Section A item 8; the number of monthly referrals for the various categories; and, the cost for each level of efficiency, including the concept of contracting to outside parties.

a) Family Court (referrals from the Judges of the Court)

<u>Levels of Efficiency</u>	<u>No. of Cases</u>		<u>Net Cost per Case</u>		<u>Net Cost per Month</u>		<u>Net Cost per year</u>
A	20.25	x	\$14	=	\$ 284	x 12	= \$ 3,408
B	20.25	x	36	=	729	x 12	= 8,748
C	20.25	x	99	=	2,005	x 12	= 24,060
Contract	20.25	x	17	=	344	x 12	= 4,128

b) Family Court (referrals from the Judges of the Court and from the Intake Service)

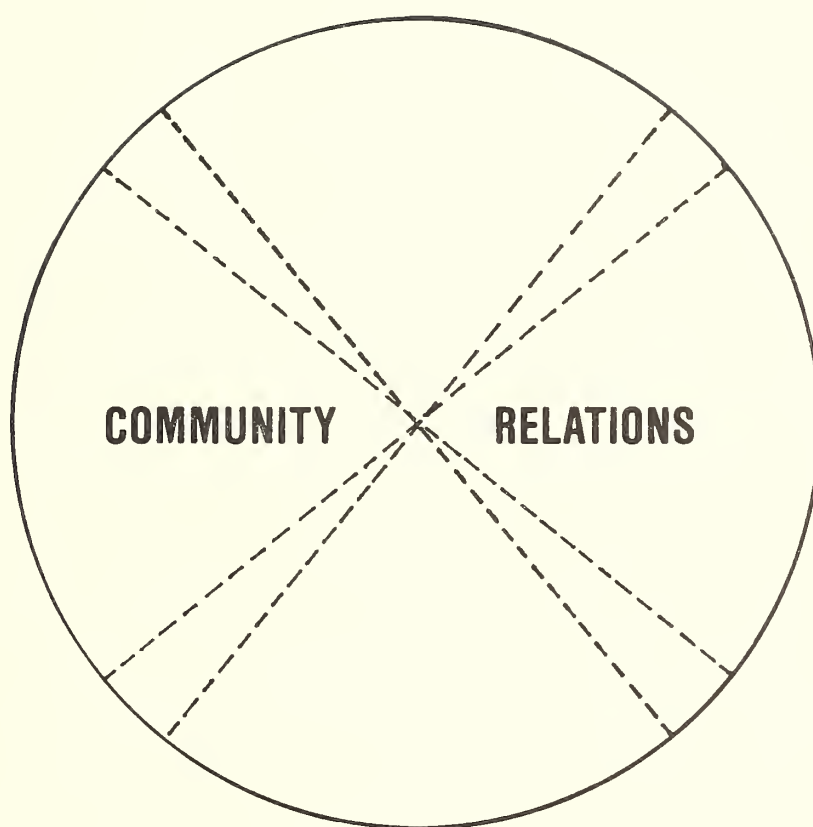
A	22.50	x	\$14	=	\$ 315	x 12	= \$ 3,780
B	22.50	x	36	=	810	x 12	= 9,720
C	22.50	x	99	=	2,228	x 12	= 26,736
Contract	22.50	x	17	=	383	x 12	= 4,596

c) Family Court (Judges of the Court and the Intake Service), Supreme Court and Lawyers

A	36.00	x	\$14	=	\$ 504	x 12	= \$ 6,048
B	36.00	x	36	=	1,296	x 12	= 15,552
C	36.00	x	99	=	3,564	x 12	= 42,768
Contract	36.00	x	17	=	612	x 12	= 7,344

e) Family Court (Judges of the Court and the Intake Service), Supreme Court, Lawyers, Agencies and Public

A	40.25	x	\$14	=	\$ 564	x 12	= \$ 6,768
B	40.25	x	36	=	1,449	x 12	= 17,388
C	40.25	x	99	=	3,985	x 12	= 47,820
Contract	40.25	x	17	=	684	x 12	= 8,208



COMMUNITY RELATIONS

GENERAL CONTACT

From the outset much effort was exerted in informing judges, lawyers, community agencies and the general public about the Conciliation Service. This work for the most part was co-ordinated through the Community Relations Committee of the Board.

Meetings were held with staff of the following agencies:

- Family Service Association of Metropolitan Toronto
- Jewish Family and Child Service of Metropolitan Toronto
- Catholic Children's Aid Society of Metropolitan Toronto
- Children's Aid Society of Metropolitan Toronto
- Department of Social Services of the Municipality of
- Metropolitan Toronto
- The Family Benefits Branch of the Ministry of Community
- and Social Services
- The Family Court Clinic of the Clarke Institute of Psychiatry
- The Metropolitan Toronto Police Department
- The Hospital for Sick Children of Metropolitan Toronto
- The West End Creche

Conciliators participated in programs of the Family Law Section of the Ontario Section of the Canadian Bar Association, the Ontario Association of Professional Social Workers, and the Ontario Association of Family Service Agencies. Further, the Project, by presenting programs on conciliation, participated in the activities of several other organizations. As well, the Project participated in education programs for Judges of the Provincial Court (Family Division).

On a case to case basis the conciliators worked closely with social workers from community agencies, lawyers and psychiatrists.

Brochures explaining the Project were sent to all lawyers and most community agencies in the Metropolitan Toronto area.

Brochures for the general public were made available at courts and community agencies, including the offices of the Legal Aid Plan in Toronto.

Contact was made and meetings were held with several of the single parent associations in Metropolitan Toronto, including the Society for Single Fathers, One Parent Families Association of Canada, Canadian Parents Without Partners and the Solo Parents Association of Ontario.

Articles on the Conciliation Service appeared in both the Toronto Star and the Globe and Mail. Conciliators participated in radio and television programs.

BOARD SEMINARS

Three Board Seminars were convened and focused on conciliation issues that were of interest to the legal, social and health service communities.

In June of 1977 the first Seminar was held. The first part consisted of a role play entitled "Counsellor as Expert Witness". Participants included a Judge of the County Court, two solicitors and two social workers. A panel discussion followed concerning the issues that relate to the use and presentation of expert evidence.

On March 1st, 1978, the second Seminar took place. It comprised a panel discussion entitled "The Mediator's Report - Its Purpose, Its Content".

The panel comprised six members representing the judiciary, and the legal and social work professions.

On August 28th, 1978, a final Seminar was convened. Its main speaker was Joan B. Kelly, Ph.D.⁵ who has undertaken extensive research relating to the children of divorced parents. Dr. Kelly gave an open presentation to invited guests followed by a one day work-shop for legal and social work practitioners. The focus of her presentation was the impact of separation and divorce on children.

CONCILIATION CONFERENCE

A Conciliation Conference organized by the Project was held on October 27th and 28th 1978. A special grant was provided by the National Health and Welfare Grants Directorate. This grant helped to finance both the Conference itself and the preparation and publication by the Project of a study of the various conciliation projects in Ontario. The objective of the Conference was to provide a two day forum for interdisciplinary dialogue around policy and practice issues relating to conciliation. Participants included members of the legal and counselling professions as well as members of the judiciary and those involved in the formulation of policy at the Federal and Provincial levels.

Involved in planning the Conference program were representatives of the conciliation services located in Kingston, Sault Ste. Marie, Owen Sound, Windsor, Hamilton and Kitchener. These representatives worked throughout the planning stages towards establishing guidelines for a Province-wide conciliation policy.

The Conference was held in Toronto. Approximately 175 people registered for the entire conference and, on the second day, attendance exceeded 300 persons.

⁵Surviving the Breakup: How Children and Parents Cope with Divorce, Wallerstein, Judith S. and Kelly, Joan Berlin. Basic Books, 1980.

The highlight of the Conference was a policy statement on conciliation delivered by the Honourable R. Roy McMurtry, Q.C., Attorney General for Ontario. In his key-note address, Mr. McMurtry formulated a series of pertinent questions concerning conciliation services, and he announced the formation of an Inter-ministerial Committee to study future policy and service considerations.

An important feature was the address by Dr. Richard Gardner, a child psychiatrist who specializes in working with the children of separated and divorced couples.

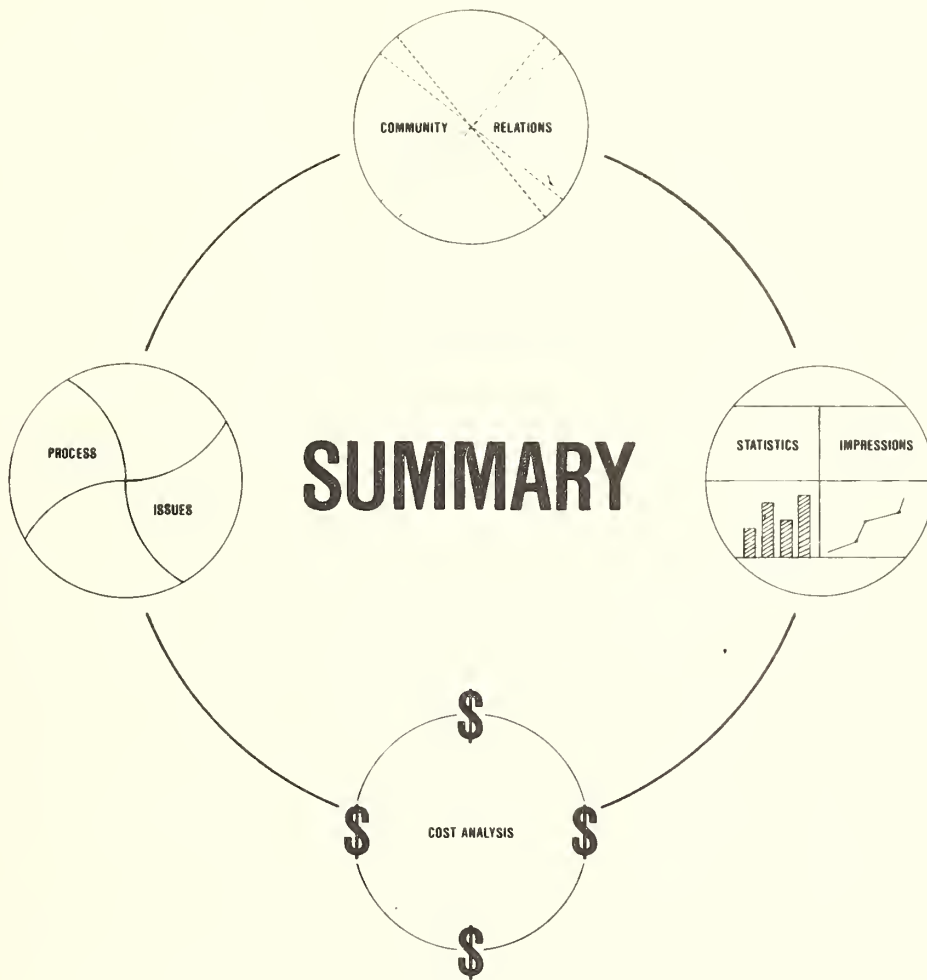
Other events included interdisciplinary panel discussions and a variety of workshops.

The most striking and successful feature of the Conference was its interdisciplinary nature. The Conference brought together, in roughly equal numbers, social workers and members of the legal profession. There was broad public exposure of the concept of conciliation through newspaper and television coverage. Representatives of the various services in the Province did not develop a single notion of provincial conciliation policy. There was, however, consensus that, because of local differences, each service would have to respond to the particular needs of its own community.

Finally, the Project undertook to answer the questions raised by the Attorney General in his address. These answers were included in the Project's subsequent submission to the Attorney General.⁶

Throughout the life of the Project, considerable contact was made with the general community by both members of the Board and Staff. On several occasions the Project was able to act as a catalyst to bring together, for their mutual benefit, those practicing in the legal and social work fields.

⁶This submission is referred to in more detail on page 80.



SUMMARY

The following is a summary of the findings and conclusions resulting from the material in this Report. They are presented by section in order of appearance.

STATISTICS AND IMPRESSIONS

The primary reason for referral, as identified by the referral source, was considered to be a good indicator of the appropriateness of a case for conciliation. Custody and Access disputes were the ones most frequently referred to conciliation, and constituted the category with the highest agreement rate. Although the conciliator with the highest agreement rate spent the most time with clients, when the work of all the conciliators was taken into account there did not appear to be a relationship between time and agreement rate.

Generally there were differences among conciliators in regard to time and agreement rates. However, there was insufficient information to determine to what extent this difference reflected on the work of the conciliator or was related to other factors such as the nature of the dispute and the motivation of the clients.

The highest agreement rate seemed to relate to the degree of co-operation among judge, lawyer and conciliator. In the Project, agreement did not appear to relate to the point in the legal process that clients decided to use conciliation. It would appear that location of the service was of relatively little significance, given the distance of many of the referral sources from the Project offices.

Half-time conciliators appeared to be more efficient than conciliators employed on a full-time basis, in terms of the relationship between direct and indirect time. However, factors related to individual conciliators appeared

to influence the staff productivity. Conciliators, on the whole, spent about equal amounts of time with mothers, fathers, and mothers and fathers together. They spent lesser amounts of time with children and other persons important to the parties.

The Project provided a useful training setting for students to develop interviewing skills. The students, in turn, brought a fresh perspective as the Project developed. Retrospectively, it would appear that the Project could have provided equally useful training for students in research.

PROCESS AND ISSUES

The conciliation process developed during the Project acknowledged that the clients had experienced family breakdown, and that their goal was to complete the necessary arrangements to live in a different way. The reason for most referrals was the awareness by the referring Court, or person, that conciliation could assist in helping the parties arrive at their own solutions.

The pressing problem was to ameliorate the destructive components of the separation. While there may have been other underlying emotional problems requiring counselling, the Project offered services in regard to the issues in dispute and not for a wide range of personal problems. Conciliation did, however, provide an opportunity for the parties to talk to someone empathic, knowledgeable and objective. An opportunity was afforded to elaborate on the reasons for the separation. While clients differed in their responses and capacities to acknowledge the emotional components of their conflict, many were able to resolve the items in dispute that concerned the separation itself.

All information obtained was treated as confidential. The conciliation reports included only those items on which the parties had agreed or not agreed; assessment information was excluded. During the Project no conciliator was required to testify in Court.

Generally, each client was seen first separately and then conjointly, sometimes with children or other parties, in a series of four to six interviews over a period up to two months.

Initial interviews dealt with the nature of the service, the history of the client and the marriage. The conjoint interviews were intended to assist the parties in sharing their impressions and feelings about the marriage, the separation, the children, and the dispute. Interviews with other parties were used where they were deemed helpful by the conciliator and the client.

With respect to custody, conciliators found that it was necessary to change the focus of the dispute. Instead of asking which parent is to gain custody in the sense of "one winning and one losing", the conciliators drew attention to the child's needs and the ability of each parent to provide for those needs. Nevertheless, the needs and wishes of the parents were explored in the context of the needs of the children. In many cases the involvement of children in the conciliation process assisted in reducing the feelings of conflict.

In access disputes, as in custody disputes, the process of conciliation involved focusing upon the needs of the children and establishing a means of communication between the parents rather than have the parents communicate through the children.

Interviews with children were a way of acknowledging to them that their feelings would be heard even though decision making rested with the parents. Such interviews were found to provide a means to relieve the anxiety of all parties. They led to an understanding by both parents of the child's needs, and in many cases led to a plan which recognized those needs.

Experience seemed to show that financial and property matters were not appropriate for conciliation within the Project, partly because such matters

were outside the training of conciliators and partly because other specialized professional services were available.

In threatening or assault cases, the conciliator's role was to assist in the understanding of the problems leading to violence, to support the court procedure, and to suggest alternative methods of resolution of conflict.

Close collaboration between lawyers and conciliators resulted in many lawyers making frequent referrals to the Project. It developed that, as a result of confidence that developed in the professional skills of the conciliators, lawyer referrals were made to specific conciliators.

A comprehensive training program for conciliators was developed by the Project. A list of important contents for such a program has been detailed in this Report.⁷

Administrative procedures for handling case files, the financial reporting and time management used by the Project are outlined earlier in the Report.⁸

COST ANALYSIS

Analysis of the cost of the closed conciliation model indicated the following:

- 1) The total cost for each conciliator was \$19.86 for each productive hour or \$29,950.00 per annum, including secretarial cost.
- 2) Depending on the level of efficiency,
 - a) a conciliator could handle from 9.8 to 14.8 cases monthly, and
 - b) from 2.7 to 4.1 conciliators would have been required to handle the number of referrals equal to those made to the Project during the spring of 1979.

⁷See pages 48-49.

⁸See page 50.

The cost of cases handled by the Provincial Court (Family Division), 311 Jarvis Street was analysed with a view of establishing what, if any, effect the existence of the Project had upon the cost of operation of the Court. From this analysis the following propositions may be stated:

- 1) There were no cost savings in those parts of the Court operation which were purely administrative;
- 2) While there may have been some savings in enforcement of orders and the scheduling of cases, little or no data was available to support this view;
- 3) While there may have been some savings in the Intake Service, they were difficult to define or substantiate, partially because the number of cases referred from the Intake Service to the Project was not large;
- 4) Using very conservative estimates, on average conciliation saved approximately \$140 of the cost of actual court time on each case dealt with by the Project.

Data is also provided in the report setting out the estimated cost of conciliation at various levels of efficiency.

COMMUNITY RELATIONS

Since the Project believed that the service must be understood by the community in order to be useful, the staff met with a variety of social, professional and governmental agencies, participated in programmes of lawyers, judges and social workers, and worked on a case by case basis with other professionals. Brochures and newspaper articles were used to broaden public understanding.

Seminars of interest to legal, social and health services focussed on particular aspects of conciliation.

The Project, with the advice of other conciliation services, organized a Conciliation Conference. The Conference brought together persons of expertise in various fields and gained considerable news media attention.

One result of this community relations work of the Project was to encourage persons in the legal and social work fields to come together and to share in experience and in understanding.

CONCLUSION

The objectives of the Project were to develop and provide an alternative to the present adversary Family Court system which would, first, offer a dispute resolution service to families in a more amicable way, and, secondly, reduce the Court time taken to deal with non-legal problems.

The approach taken by the Project, of direct conciliation with the parties to the dispute over a relatively short period of time, appeared to the Project staff and its Board of Directors to be successful in most cases, especially those involving custody and access, within the objectives of the Project.

An interim research Report entitled "A Comparative Analysis of Two Family Court Services: An Exploratory Study of Conciliation Counselling" was published in September 1979 and it is hoped to complete the final research report in the Fall of 1980.

As the three demonstration years of the Project were growing to a close, the Board of Directors made a submission to the Attorney General for Ontario. It was recommended that the service component and training capabilities of the Project be carried over as part of the totality of services offered by the Provincial Court (Family Division) situated at 311 Jarvis Street,

We recommend to any community that it consider conciliation as an alternative means to the resolution of family disputes at the point of separation or divorce.

APPENDIX

STANDING COMMITTEES

ESTABLISHED BY THE BOARD OF DIRECTORS OF THE PROJECT

EXECUTIVE COMMITTEE

Dr. D. Mendes da Costa	Chairman
Mrs. R. Parry	Vice Chairman
Mr. H. Nixon	Accountant
Judge D.R. Main	Ex Officio

ACCOUNTING COMMITTEE

Mr. H. Nixon	Chairman
Mr. W.R. Donkin	
Judge D.R. Main	

COMMUNITY RELATIONS COMMITTEE

Ms. M. Swirsky	Chairman
Senior Judge L.A. Beaulieu	
Mrs. B. Clements	
Mr. B. Falls	
Mr. R. Klassen	
Mr. E. Larman	
Mr. L. Perry	
Madame Commissioner G. Spiegel	
Staff Sgt. W. Stanton	

PERSONNEL & TRAINING

Chief Judge H.T.G. Andrews Chairman

Mr. J. Jennings

Mr. E. Larman

Mrs. R. Parry

Mr. A. Sherlock

Judge E.F. Wren

RESEARCH COMMITTEE

Ms. J. Rowney Chairman

Senior Judge L.A. Beaulieu

Mr. P. Bohm

Master A. Davidson

Dr. H. Irving

Mrs. F. Pendrith

Ms. P. Tummon

Mrs. K. Weiler

